NSC INTERAGENCY TASK FORCE ON THE LAW OF THE SEA

UNCLASSIFIED

NSC-D/LOS # 401

MEMORANDUM

June 11, 1975

TO: Members of the LOS Executive Group

SUBJECT: Congressional Testimony

Attached for your information are statements given before recent Congressional Hearings:

1. John R. Stevenson - Senate Commerce Committee, The National Oceans Policy Study, June 3

2. John Norton Moore - Senate Commerce Committee, The National Oceans Policy Study, June 3

3. John R. Stevenson - Senate Interior and Insular Affairs Committee Joint Meeting of the Sub-committee on Minerals, Materials and Fuels, June 4

4. John Norton Moore, Senate Interior and Insular Affairs Committee Joint Meeting of the Sub-committee on Minerals, Materials, and Fuels, June 4

5. David Wallace, Senate Commerce Committee, June 6

6. Admiral Owen W. Siler - Senate Commerce Committee, June 6

7. John Norton Moore - House Committee on Armed Services, Seapower Subcommittee, June 9

8. Stuart French - House Committee on Armed Services, Seapower Subcommittee, June 9

9. RADM Max K. Morris - House Committee on Armed Services, Seapower Subcommittee, June 9

10. Leigh Ratiner, Senate Foreign Relations Committee, statement dated June 10.

Otho E. Eskin

Otho E. Eskin
Staff Director

Attachments:

As stated

STATEMENT BY
THE HONORABLE JOHN R. STEVENSON, CHIEF,
UNITED STATES DELEGATION TO THE GENEVA SESSION
OF THE THIRD UNITED NATIONS CONFERENCE
ON THE LAW OF THE SEA
BEFORE THE SENATE COMMERCE COMMITTEE, THE NATIONAL
OCEANS POLICY STUDY
TUESDAY, JUNE 3, 1975

Dear Mr. Chairman:

Once again, it is an honor and pleasure to report to the Senate Commerce Committee on the progress in the Law of the Sea negotiations. The second substantive session of the Third United Nations Conference on the Law of the Sea was held in Geneva from March 17 to May 9, 1975. A third substantive session of eight weeks is planned for New York in 1976 commencing on March 29; the Conference also recommended that the United Nations General Assembly provide for an additional substantive session in the summer of 1976 if the Conference so decides and that the Conference be given priority by the General Assembly. Much to my regret our proposal that the Assembly expressly provide for completion of the treaty in 1976 was not approved.

Senator Stevens of this Committee and Committee staff provided helpful advice to the United States Delegation in Geneva. I speak for the entire Delegation in expressing our appreciation for the interest and cooperation of this Committee.

I would summarize the results of the Geneva session as follows: The session concentrated on what it was supposed to--the translation of the general outlines of agreement reached at the first session in Caracas into specific treaty articles--and achieved a very considerable degree of progress; however, not as much progress as our Delegation had hoped or as the pressures for prompt agreement on a new law of the sea demand.

The decision of the Caracas session not to prolong general debate was respected--so much so that formal Plenary and Committee sessions were largely devoted to organizational and procedural matters. The substantive work of the session was carried on in informal Committee meetings (without records) and in working groups--both official and unofficial--with as many as fifteen different groups meeting in the course of a single day; and in private bilateral and multilateral consultations.

The official groups were handicapped by the insistence--a reflection of the acute sensitivity of many countries with respect to the sovereign equality of all states--that all such groups be open-ended. As a result they were generally ineffectual in dealing

with controversial issues of general interest; such meetings were attended by a large number of delegations who, by and large, restated their national positions rather than negotiating widely acceptable treaty language. The official working groups were much more effective in dealing with a number of articles which were relatively non-controversial or of interest to only a limited number of countries--such as the articles dealing with the baselines from which the territorial area is to be measured, innocent passage in the territorial sea, high seas law and, in the pollution area, articles on monitoring, environmental assessment and land-based sources of pollution.

The most effective negotiations and drafting of compromise treaty articles in major controversial areas took place in unofficial groups of limited but representative composition which were afforded interpretation and other logistical support by the Conference secretariat.

The Evensen group of some 30 to 40 participants, principally heads of delegation, was organized by Minister Evensen of Norway, initially on the basis of cooperation by a group of international lawyers acting in their personal capacity, but functioning at Geneva more as representatives of their respective countries.

The Evensen group concentrated on the economic zone, the continental shelf, and vessel-source pollution. The dispute settlement group which met under the co-chairmanship of Mr. Adede of Kenya and Ambassadors Galindo Pohl of El Salvador and Harry of Australia, with Professor Louis Sohn of Harvard serving as Rapporteur, was open to all Conference participants and was attended at one time or another by representatives from more than 60 countries. Another informal group was organized by representatives of the United Kingdom and Fiji to work out a set of articles on unimpeded transit through straits as a middle ground between the free transit articles supported by many maritime countries and the innocent passage concept supported by a number of straits states.

In brief, the principal substantive accomplishments of the session were the large number of relatively non-controversial treaty articles agreed to in the official working groups and the more controversial articles negotiated in the smaller unofficial groups which, while not as yet accepted by the Conference as a whole, do represent negotiated articles in large measure accommodating the main trends at the Conference.

The principal procedural achievement of the Geneva session was the preparation of an informal single negotiating

text covering virtually all the issues before the Conference. This text was prepared by the Chairmen of the three Main Committees on their responsibility pursuant to the consensus decision of the Plenary, on the proposal of the Conference President, that they should prepare a negotiating (not negotiated) text as a procedural device to provide a basis for negotiations. Copies of the text have been given to the Committee for your study, and possible inclusion in the record. The single Committee text does provide a means for focussing the Conference work in a way that should facilitate future negotiations with revisions and amendments reflecting the agreements and accommodations I hope will be reached at the next session. However, the utility of the three texts for this purpose varies considerably, reflecting the different extent to which the respective authors adhered to the President's admonition to "take account of the formal and informal discussions held so far."

There was clear evidence at the Geneva session of a widespread desire to conclude a comprehensive treaty on the Law of the Sea. Unfortunately, the nature of the negotiations was not geared to immediately visible results and the public impressions may have been that little progress was made. In fact, there were substantial

achievements in some areas, although overall I was disappointed that the work schedule outlined by the General Assembly for conclusion of the treaty in 1975 will not be met. The informal single text and the provision for a second meeting in 1976 if the Conference so decides, provide a procedural basis for concluding a treaty next year. It remains to be seen whether or not the will exists to reach pragmatic solutions where wide differences of view still exist. In this connection, I should also point out that a number of countries, particularly those with little to gain and in some cases much to lose from the establishment of a 200-mile economic zone, do not share our perception of the urgency of completing the treaty promptly. With the general expectation from the outset that at least one more full negotiating session would be scheduled in 1976, the United States was virtually isolated in urging major political compromise at the Geneva session on the very difficult Committee I deep seabed issues.

I believe that much common ground was found on navigation, fisheries, continental shelf resources and marine pollution issues. Significant differences remain with respect to the deep seabed regime and authority and, to a lesser degree, on scientific research and on

the desires of landlocked and geographically disadvantaged states to participate in resources exploitation in the economic zone.

The juridical content of the 200-mile economic zone is probably the issue of the greatest interest to most countries.

The Evensen group made a considerable contribution to the Committee II single text by producing a chapter on the economic zone, including fisheries and continental shelf. These articles provide for comprehensive coastal-state management jurisdiction over coastal fisheries stocks out to 200 miles. There is also a coastal-state duty to conserve stocks and to fully utilize them by allowing access by foreign states to the catch in excess of the coastal state's harvesting capacity. The articles on anadromous species (e.g., salmon) were largely acceptable to the states most affected. These articles contain new, strong protections for the state in whose fresh waters anadromous fish originate. Attempts to negotiate acceptable articles on highly migratory species such as tuna were not successful at this session. Efforts to reach a negotiated solution in this area, however, will continue.

There was little opposition to a 12-mile territorial sea (Ecuador's proposal for a 200-mile territorial sea

was supported only by a handful of countries and even some of the supporting statements were ambiguous). There was a strong trend in favor of a regime of unimpeded transit passage in straits used for international navigation. There was very widespread acceptance of freedom of navigation and overflight and other uses related to navigation and communication as well as freedom to lay submarine cables and pipelines in the 200-mile economic zone.

Coastal state exclusive rights to the non-living resources (principally petroleum and natural gas) in the economic zone were broadly supported. There was more controversy with respect to coastal state rights to mineral resources of the continental margin where it extends beyond 200 miles. As a possible compromise between opposing views, the United States suggested the establishment of a precise and reasonable outer limit for the margin coupled with an obligation to share a modest percentage of the well-head value of petroleum and natural gas production with the international community. I anticipate that there will be further negotiations in the Evensen group to determine a precise method for defining the outer limit of the continental margin beyond 200 miles and on a precise formula for revenue sharing.

Regarding protection of the marine environment, texts were completed in the official working groups on monitoring, environmental assessment and land-based pollution. Texts were almost completed on ocean dumping and continental shelf pollution. Negotiations were conducted in the Evensen group on vessel-source pollution without reaching agreement; however, a trend did emerge in favor of international standard setting for vessel-source pollution throughout the economic zone.

The Group of 77, particularly those members who did not participate in the Evensen group, urged further strengthening of coastal state rights in the economic zone. The landlocked and geographically disadvantaged states were dissatisfied with the failure of the Evensen articles to afford them the legal right to participate in exploiting the natural resources of the economic zone on a basis of equality with coastal states.

There was a continuation of the debate between those states that demand consent for all scientific research conducted in the economic zone and those, such as the United States, that support the right to conduct such research subject to the fulfillment of internationally agreed obligations. A new approach sponsored by the Soviet Union attracted considerable attention. It requires consent for resource-related reserach and

compliance with internationally agreed obligations for non-resource related research.

In the dispute settlement working group most states support binding dispute settlement procedures in areas of national jurisdiction although a minority opposed or wish to limit drastically their applicability (e.g., to navigation and pollution issues). Questions remain with respect to the relationship to coastal state resource jurisdiction and the scope and type of the dispute settlement mechanism. A compromise proposal permitting states to elect between three dispute settlement mechanisms--i.e., the International Court of Justice, arbitration, or a special Law of the Sea Tribunal--was acceptable to the vast majority of participants. However, some delegations considered that their preferred mechanism should be compulsory in all cases, while others favor a functional approach--different machinery for different types of disputes. General support exists for special dispute machinery for the deep seabed.

It is now clear that the negotiation on the nature of the deep seabed regime and authority is the principal stumbling block to a comprehensive Law of the Sea Treaty.

The basic problem is an ideological gap between those possessing the technological ability to develop deep seabed minerals and those developing countries which insist that the international Authority directly and effectively control all deep seabed mining and associated activities, and ultimately become the exclusive operator on the deep seabed. The developing countries' position in this area is reflective of their general concern expressed in other international forums for reordering the economic order with respect to access to and control over natural resources, particularly with respect to their price and rate of development.

The United States explored a number of approaches in an effort to be forthcoming with respect to developing country demands for participating in the exploitation system. We indicated our willingness to abandon the inclusion of detailed regulatory provisions in the treaty and to concentrate on basic conditions of exploitation. We agreed to consider a system of joint ventures and profit sharing with the Authority. In addition, we proposed for consideration the reservation of areas (equal in extent and potential to those in which financial conditions were subject to the Basic Conditions) in which the Authority could negotiate for the most favorable financial terms it could obtain. The Soviet

Union proposed a parallel system through the reservation of areas in which the Authority could exploit directly, while in other areas states could exploit under a separate system of regulation by the Authority. Both approaches were rejected by the Group of 77. Some developing country flexibility in the deep seabeds was demonstrated by their willingness to submit the entire exploitation system to the control of the Seabed Authority Council and to include representatives of designated developed and developing country interest groups on that body in addition to those selected on the basis of equitable geographic representation.

Mr. Chairman, with over 140 states participating in a Conference affecting vital and complex economic, military, political, environmental and scientific interests, we could easily characterize the results of the Geneva session as a considerable success. However, it is no longer sufficient to make progress, even substantial progress, if the goal to the adoption of a widely acceptable, comprehensive treaty continues to elude us beyond the point at which many States will feel compelled to take matters into their own hands in protecting interests with which the existing law of the sea does not deal adequately or equitably.

Mr. Chairman, we would be terribly remiss as a nation if we did not make every exertion necessary to achieve an acceptable treaty on what appears to be the final stretch of this long road we have travelled. I sincerely hope that this Committee and the Congress in general will give its support to my successor as it has to me in our common endeavor to establish order in the oceans.

STATEMENT BY
THE HONORABLE JOHN NORTON MOORE
CHAIRMAN, NSC INTERAGENCY TASK FORCE ON THE LAW OF THE SEA,
DEPUTY SPECIAL REPRESENTATIVE OF THE PRESIDENT
FOR THE CONFERENCE ON THE LAW OF THE SEA AND UNITED
STATES REPRESENTATIVE TO THE THIRD UNITED NATIONS
CONFERENCE ON THE LAW OF THE SEA
BEFORE THE SENATE COMMERCE COMMITTEE, THE NATIONAL
OCEANS POLICY STUDY
TUESDAY, JUNE 3, 1975

Mr. Chairman:

It is a pleasure to again appear before this Committee to report on the progress made at the recently concluded Geneva session of the Third United Nations Conference on the Law of the Sea. Before turning to the substance of my report, I would like to thank Senator Stevens and staff members of this Committee who came to Geneva and participated in the work of the Delegation. Whatever our differences have been on the timing of specific interim legislation, Congress and the Executive have been united on the importance of a timely and successful Law of the Sea Treaty which fully protects the vital interests of the United States and the world community as a whole. Your cooperation and support has been of particular assistance in moving toward that goal. For our part, we recognize that the formulation of United States ocean's policy is a shared responsibility between Congress and the Executive and we are determined to make the law of the sea a model of cooperative partnership.

In previous testimony before this Committee, I have indicated that there were reasonable prospects of adhering to the General Assembly schedule and completing the work of the Conference during 1975. Indeed, this timing has been a cornerstone of our interim policy. I regret to report to you that I was wrong and that this schedule was overly optimistic. It is now clear that the negotiations cannot be completed before mid 1976 at the earliest and at this time it is not clear whether or not a treaty can be completed during 1976. The Conference has agreed to recommend to the General Assembly that the next session be held for eight weeks beginning on March 29, 1976 and that the Conference then decide whether an additional session is needed during the summer of 1976. Though such a schedule could conclude a treaty during 1976 if there is sufficient will to do so, I would not be frank with this Committee if I did not express my disappointment that a target date to conclude a treaty was not agreed by the Conference despite what seems to be a majority sentiment for conclusion during 1976.

In the light of this timing problem we are now conducting a thorough reevaluation of our interim policy

to ensure that the necessary balance is found between our broad interest in a multilateral resolution of oceans' problems and our more immediate needs, particularly the protection of coastal fisheries stocks and access to deep seabed minerals. This reevaluation will take into account the strong preference of many members of Congress for an extension of coastal fisheries jurisdiction to 200 miles, the nearly universal acceptance by the Conference of the 200-mile economic zone, and the need to construct an interim policy which encourages the timely conclusion of a comprehensive Law of the Sea Treaty in the interests of all nations.

Because of the concern of many members of Congress with our immediate oceans' needs during the next few weeks I and others will be consulting closely with this and other interested committees of both Houses. As a responsible nation and a good neighbor, we will also be consulting with our immediate neighbors and other affected nations.

We hope to complete our study and consultations by, or soon after, the August Congressional recess at which time we will submit to the Congress not only our

recommendations concerning interim legislation, but also a full and frank evaluation of the factors that we have weighed. This evaluation will not be a brief for our conclusions, whatever they may be. Rather, it will be as objective as possible and will lay before you the many factors which both the Congress and the Executive must weigh.

We wish to make clear that we do not preclude any particular result to our reevaluation, including the principal proposals now pending before you. We ask only that together we plan an interim policy which will be most effective in meeting our interim oceans needs and encouraging a satisfactory long-run solution through a comprehensive Law of the Sea Treaty.

Despite the disappointment with respect to the pace and timing of the Conference work program, the Geneva session made progress and, in some respects, substantial progress. Most significantly, the will to negotiate, which had been largely missing at Caracas, was in greater, if not universal, evidence. There was no general debate and negotiations in small, informal groups of principally interested states largely replaced

less useful restatements of positions in the Committees of the whole. This increased will to negotiate led directly to the most important achievement of the session: the preparation of a single negotiating text on virtually all subjects before the Conference. This informal single text has been given to your Committee Staff for inclusion in the record of this Hearing, if you so desire. The single text was prepared by the Chairman of each of the three Committees pursuant to a formal Conference decision. Although the single text is not a fully negotiated or consensus document, it is in important respects, at least in regard to Committees II and III, an indication of an overall package necessary for a satisfactory treaty. Moreover, in many areas, for example the articles on baselines, innocent passage in the territorial sea, the high seas, and many general articles on the protection of the marine environment, for the most part the single text reflects broad consensus. On other issues, for example the economic zone and transit of straits, it largely reflects areas of broad support negotiated within informal working groups. In some other respects, particularly in

Committee I which deals with the difficult problem of a regime and machinery for deep seabed mining, in our opinion the single text did not reflect the kind of accommodation necessary for agreement.

Even though it is not a negotiated or consensus text, the preparation of a single text is a significant and necessary step toward a treaty. For the first time, the Conference will be able to focus on a specific text rather than a multitude of alternatives and national proposals. And for the first time it will be possible to study the overall relationships inherent in a comprehensive package agreement. Though no government, including our own, will be completely satisfied with the content of the single text, it now makes more rapid Conference progress possible. I believe that for the most part, at least for the work of Committees II and III, it also reflects a widely shared view about the nature of the overall package in a manner conducive to the achievement of a realistic and widely acceptable treaty.

Of particular interest to you and other members of this Committee concerned with the need for greater protection of coastal fisheries, the single text in Committee II strongly confirms coastal State conservation and management jurisdiction over coastal species

of fish out to 200 miles and provides realistic protection for anadromous stocks within and beyond 200 miles. While the text also contains recognition of the need for international management of highly migratory species, informal negotiations have not yet produced the same degree of consensus evident with respect to coastal and anadromous stocks.

The Conference on the Law of the Sea is one of the most complex and important negotiations in our history. It touches the raw nerves of national interests in almost all nations of the world, and particularly of the United States which has perhaps the largest and most diverse oceans interests of any nation. Our disappointment at the pace of the negotiations is genuine and requires a careful re-thinking of our interim policy. But it is equally necessary in reformulating a realistic interim policy that we not lose sight of our shared commitment to a comprehensive treaty. A treaty which fully protects the vital interest of the United States and of the world community as a whole is in the interest of all nations. We will continue to do our part to encourage such an agreement.

As we begin the detailed analysis of the single text it is particularly important that we keep in mind the vision with which this Conference was founded: creation of a truly universal oceans law in the common interest of all nations. A successful Conference on the law of the sea will mean more than protection of fisheries, navigation, the oceans environment and access to mineral resources, as important as these interests are tc all nations. Rather it will also mean a substantial reduction of oceans disputes among nations and that cooperation among all nations in the solution of global problems is possible as well as necessary. There are considerations which must not be set aside as we review the more detailed issues.

I believe that the common purpose that has sustained the Law of the Sea negotiations through its difficult, time-consuming early stages is intact. That purpose is the shared conviction of leaders from all parts of the world that law, not anarchy, will best serve man's future in the oceans. The real problems of nations that make this negotiation difficult will not disappear if we do not succeed; they will become worse. There are, of course, basic differences in national interest and the sense of urgency of resolving our oceans'

problems, as well as basic differences or perception on how best to protect common interests. But no one, I believe, would willingly choose the course of chaos in which even great power prevails at great cost.

Thank you, Mr. Chairman.

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DEPUTY SPECIAL REPRESENTATIVE OF THE PRESIDENT FOR THE
LAW OF THE SEA CONFERENCE AND UNITED STATES REPRESENTATIVE
TO THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA
BEFORE THE HOUSE ARMED SERVICES COMMITTEE, SUBCOMMITTEE
ON SEAPOWER AND STRATEGIC AND CRITICAL MATERIALS

Mr. Chairman:

I appreciate the opportunity to appear before this Subcommittee for the first time to report on the activities at the Third United Nations Conference on the Law of the Sea. Accompanying me today from the Department of Defense are Mr. Stuart P. French of International Security Affairs and Rear Admiral Max K. Morris of the Joint Chiefs of Staff.

Mr. Chairman, in 1970, the United Nations scheduled a comprehensive Conference on the Law of the Sea. Since then six preparatory sessions, one organizational session and two substantive sessions have been held. The second substantive session of eight weeks duration was recently concluded in Geneva. The Conference has agreed to recommend to the General Assembly that the next session be held for eight weeks beginning on March 29, 1976 and that the Conference then decide whether an additional session is needed during the summer of 1976. Though such a schedule could conclude a treaty during 1976 if there is sufficient will to do so it is not clear that this will happen. I would not be frank with this Committee if I did not express

my disappointment that a target date to conclude a treaty was not agreed by the Conference despite what seems to be a majority sentiment for conclusion during 1976.

The substantive work of the Conference takes place in three main committees. The first Committee deals with the international regime and machinery for the seabed area beyond national jurisdiction. The principal concern is with the mining of manganese nodules. The third Committee mandate includes preservation of the marine environment, scientific research and transfer of technology. The second Committee is responsible for the more traditional law of the sea topics -- territorial sea, straits, continental shelf, fisheries and related matters.

The most important achievement of the Geneva session that was attended by more than 140 States was the preparation of a single negotiating text on virtually all subjects before the Conference. This informal single text has been given to your Committee Staff for inclusion in the record of this Hearing, if you so desire. The single text was prepared by the Chairman of each of the three Committees pursuant to a formal Conference decision. Although the single text is not a fully negotiated or consensus document, it is in important respects, at least in regard to Committees II and III, an indication of an overall package necessary for a satisfactory treaty. Moreover, in many areas, for example the articles on baselines, innocent passage in the territorial

sea, the high seas, and many general articles on the protection of the marine environment, the single text for the most part reflects broad consensus. On other issues, for example the economic zone and transit of straits, it largely reflects areas of broad support negotiated within informal working groups. In some other respects, particularly in Committee I which deals with the difficult problem of a regime and machinery for deep seabed mining, in our opinion the single text does not reflect the kind of accommodation necessary for agreement.

Even though it is not a negotiated or consensus text, the preparation of the single text is a significant and necessary step toward a treaty. For the first time, the Conference will be able to focus on a specific text rather than a multitude of alternatives and national proposals. And for the first time it will be possible to study the overall relationships inherent in a comprehensive package agreement. Though no government, including our own, will be completely satisfied with the content of the single text, it now makes more rapid Conference progress possible. I believe that for the most part, at least for the work of Committees II and III, it also reflects a widely shared view about the nature of the overall package in a manner conducive to the achievement of a realistic and widely acceptable Treaty.

This Subcommittee is particularly interested in freedom of navigation and unimpeded transit through, over and under straits used for international navigation. I am pleased to report that there is near universal support for freedom of navigation in the 200-mile economic zones contemplated in the treaty. Moreover, there is a strong trend in favor of unimpeded transit in the normal mode for all vessels and aircraft in straits used for international navigation. These developments bode well for the Conference as the United States has repeatedly stated that accommodation of its navigational objectives was essential for an acceptable agreement.

I would like to reiterate here our vital interests require that agreement on a 12-mile territorial sea must be coupled with agreement on unimpeded transit of straits used for international navigation and that these remain among the basic elements of our national policy which we will not sacrifice.

We have a difficult negotiation ahead of us, particularly in the deep seabed area. However, the world has run out of time for sterile discussion on procedure or ideology. With perhaps the largest and most diverse ocean interests of any nation, the United States must continue to play a leadership role in one of the most complex and important negotiations in our history. We will fulfill that obligation with the view that a treaty which fully protects the vital interests of the world community as a whole is in the interests of all nations.

I believe that the common purpose that has sustained the Law of the Sea negotiations through its difficult, time-consuming early stages is intact. That purpose is the shared conviction of leaders from all parts of the world that the law, now anarchy, will best serve man's future in the oceans. The real problems of nations that make this negotiation difficult will not disappear if we do not succeed; they will become worse. There are, of course, basic differences in national interest and the sense of urgency of resolving our ocean's problems, as well as basic differences of perception on how best to protect common interests. But no one, I believe, would willingly choose the course of chaos in which even great power prevails at great cost.

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THE HONORABLE JOHN R. STEVENSON, CHIEF,
UNITED STATES DELEGATION TO THE GENEVA SESSION
OF THE THIRD UNITED NATIONS CONFERENCE
ON THE LAW OF THE SEA
BEFORE THE SENATE INTERIOR AND INSULAR AFFAIRS COMMITTEE,
JOINT MEETING OF THE SUBCOMMITTEE ON MINERALS,
MATERIALS AND FUELS
WEDNESDAY, JUNE 4, 1975

Mr. Chairman:

Once again, it is an honor and pleasure to report to the Senate Interior and Insular Affairs Committee on the progress in the Law of the Sea negotiations. The second substantive session of the Third United Nations Conference on the Law of the Sea was held in Geneva from March 17 to May 9, 1975. A third substantive session of eight weeks is planned for New York in 1976 commencing on March 29; the Conference also recommended that the United Nations General Assembly provide for an additional substantive session in the summer of 1976 if the Conference so decides and that the Conference be given priority by the General Assembly. Much to my regret our proposal that the Assembly expressly provide for completion of the treaty in 1976 was not approved.

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The decision of the Caracas session not to prolong general debate was respected--so much so that formal Plenary and Committee sessions were largely devoted to organizational and procedural matters. The substantive work of the session was carried on in informal Committee meetings (without records) and in working groups--both official and unofficial--with as many as fifteen different groups meeting in the course of a single day; and in private bilateral and multilateral consultations.

The official groups were handicapped by the insistence--a reflection of the acute sensitivity of many countries with respect to the sovereign equality of all states--that all such groups be open-ended. As a result they were generally ineffectual in dealing

with controversial issues of general interest; such meetings were attended by a large number of delegations who, by and large, restated their national positions rather than negotiating widely acceptable treaty language. The official working groups were much more effective in dealing with a number of articles which were relatively non-controversial or of interest to only a limited number of countries--such as the articles dealing with the baselines from which the territorial area is to be measured, innocent passage in the territorial sea, high seas law and, in the pollution area, articles on monitoring, environmental assessment and land-based sources of pollution.

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The juridical content of the 200-mile economic zone is probably the issue of the greatest interest to most countries.

The Evensen group made a considerable contribution to the Committee II single text by producing a chapter on the economic zone, including fisheries and continental shelf. These articles provide for comprehensive coastal-state management jurisdiction over coastal fisheries stocks out to 200 miles. There is also a coastal-state duty to conserve stocks and to fully utilize them by allowing access by foreign states to the catch in excess of the coastal state's harvesting capacity. The articles on anadromous species (e.g., salmon) were largely acceptable to the states most affected. These articles contain new, strong protections for the state in whose fresh waters anadromous fish originate. Attempts to negotiate acceptable articles on highly migratory species such as tuna were not successful at this session. Efforts to reach a negotiated solution in this area, however, will continue.

There was little opposition to a 12-mile territorial sea (Ecuador's proposal for a 200-mile territorial sea

was supported only by a handful of countries and even some of the supporting statements were ambiguous). There was a strong trend in favor of a regime of unimpeded transit passage in straits used for international navigation. There was very widespread acceptance of freedom of navigation and overflight and other uses related to navigation and communication as well as freedom to lay submarine cables and pipelines in the 200-mile economic zone.

Coastal state exclusive rights to the non-living resources (principally petroleum and natural gas) in the economic zone were broadly supported. There was more controversy with respect to coastal state rights to mineral resources of the continental margin where it extends beyond 200 miles. As a possible compromise between opposing views, the United States suggested the establishment of a precise and reasonable outer limit for the margin coupled with an obligation to share a modest percentage of the well-head value of petroleum and natural gas production with the international community. I anticipate that there will be further negotiations in the Evensen group to determine a precise method for defining the outer limit of the continental margin beyond 200 miles and on a precise formula for revenue sharing.

Regarding protection of the marine environment, texts were completed in the official working groups on monitoring, environmental assessment and land-based pollution. Texts were almost completed on ocean dumping and continental shelf pollution. Negotiations were conducted in the Evensen group on vessel-source pollution without reaching agreement; however, a trend did emerge in favor of international standard setting for vessel-source pollution throughout the economic zone.

The Group of 77, particularly those members who did not participate in the Evensen group, urged further strengthening of coastal state rights in the economic zone. The landlocked and geographically disadvantaged states were dissatisfied with the failure of the Evensen articles to afford them the legal right to participate in exploiting the natural resources of the economic zone on a basis of equality with coastal states.

There was a continuation of the debate between those states that demand consent for all scientific research conducted in the economic zone and those, such as the United States, that support the right to conduct such research subject to the fulfillment of internationally agreed obligations. A new approach sponsored by the Soviet Union attracted considerable attention. It requires consent for resource-related reserach and

compliance with internationally agreed obligations for non-resource related research.

In the dispute settlement working group most states support binding dispute settlement procedures in areas of national jurisdiction although a minority opposed or wish to limit drastically their applicability (e.g., to navigation and pollution issues). Questions remain with respect to the relationship to coastal state resource jurisdiction and the scope and type of the dispute settlement mechanism. A compromise proposal permitting states to elect between three dispute settlement mechanisms--i.e., the International Court of Justice, arbitration, or a special Law of the Sea Tribunal--was acceptable to the vast majority of participants. However, some delegations considered that their preferred mechanism should be compulsory in all cases, while others favor a functional approach--different machinery for different types of disputes. General support exists for special dispute machinery for the deep seabed.

It is now clear that the negotiation on the nature of the deep seabed regime and authority is the principal stumbling block to a comprehensive Law of the Sea Treaty.

The basic problem is an ideological gap between those possessing the technological ability to develop deep seabed minerals and those developing countries which insist that the international Authority directly and effectively control all deep seabed mining and associated activities, and ultimately become the exclusive operator on the deep seabed. The developing countries' position in this area is reflective of their general concern expressed in other international forums for reordering the economic order with respect to access to and control over natural resources, particularly with respect to their price and rate of development.

The United States explored a number of approaches in an effort to be forthcoming with respect to developing country demands for participating in the exploitation system. We indicated our willingness to abandon the inclusion of detailed regulatory provisions in the treaty and to concentrate on basic conditions of exploitation. We agreed to consider a system of joint ventures and profit sharing with the Authority. In addition, we proposed for consideration the reservation of areas (equal in extent and potential to those in which financial conditions were subject to the Basic Conditions) in which the Authority could negotiate for the most favorable financial terms it could obtain. The Soviet

Union proposed a parallel system through the reservation of areas in which the Authority could exploit directly, while in other areas states could exploit under a separate system of regulation by the Authority. Both approaches were rejected by the Group of 77. Some developing country flexibility in the deep seabeds was demonstrated by their willingness to submit the entire exploitation system to the control of the Seabed Authority Council and to include representatives of designated developed and developing country interest groups on that body in addition to those selected on the basis of equitable geographic representation.

Mr. Chairman, with over 140 states participating in a Conference affecting vital and complex economic, military, political, environmental and scientific interests, we could easily characterize the results of the Geneva session as a considerable success. However, it is no longer sufficient to make progress, even substantial progress, if the goal to the adoption of a widely acceptable, comprehensive treaty continues to elude us beyond the point at which many States will feel compelled to take matters into their own hands in protecting interests with which the existing law of the sea does not deal adequately or equitably.

Mr. Chairman, we would be terribly remiss as a nation if we did not make every exertion necessary to achieve an acceptable treaty on what appears to be the final stretch of this long road we have travelled. I sincerely hope that this Committee and the Congress in general will give its support to my successor as it has to me in our common endeavor to establish order in the oceans.

STATEMENT BY
THE HONORABLE JOHN NORTON MOORE
CHAIRMAN, NSC INTERAGENCY TASK FORCE ON THE LAW OF THE SEA
DEPUTY SPECIAL REPRESENTATIVE OF THE PRESIDENT
FOR THE CONFERENCE ON THE LAW OF THE SEA AND UNITED
STATES REPRESENTATIVE TO THE THIRD UNITED NATIONS
CONFERENCE ON THE LAW OF THE SEA
BEFORE THE SENATE INTERIOR AND INSULAR AFFAIRS COMMITTEE,
JOINT MEETING OF THE SUBCOMMITTEE ON MINERALS, MATERIALS AND FUELS
WEDNESDAY, JUNE 4, 1975

Mr. Chairman:

It is an honor and a pleasure to again appear before this Subcommittee to report on the progress made at the recently concluded Geneva session of the Third United Nations Conference on the Law of the Sea. Before turning to the substance of my report, I would like to thank the staff members of this Committee who came to Geneva and participated in the work of the Delegation. Whatever our differences have been on the timing of specific interim legislation, Congress and the Executive have been united on the importance of a timely and successful Law of the Sea Treaty which fully protects the vital interests of the United States and the world community as a whole. Your cooperation and support has been of particular assistance in moving toward that goal. For our part, we recognize that the formulation of United States' ocean's policy is a shared responsibility between Congress and the Executive and we are determined to make the law of the sea a model of cooperative partnership.

In previous testimony before this Committee, I have indicated that there were reasonable prospects of adhering to the General Assembly schedule and completing the work of the Conference during 1975. Indeed, this timing has been a cornerstone of our interim policy. I regret to report to you that I was wrong and that this schedule was overly optimistic. It is now clear that the negotiations cannot be completed before mid 1976 at the earliest and at this time it is not clear whether or not a treaty can be completed during 1976. The Conference has agreed to recommend to the General Assembly that the next session be held for eight weeks beginning on March 29, 1976 and that the Conference then decide whether an additional session is needed during the summer of 1976. Though such a schedule could conclude a treaty during 1976 if there is sufficient will to do so, I would not be frank with this Committee if I did not express my disappointment that a target date to conclude a treaty was not agreed by the Conference despite what seems to be a majority sentiment for conclusion during 1976.

In the light of this timing problem we are now conducting a thorough reevaluation of our interim policy to ensure that the necessary balance is found between our broad interest in a multilateral resolution of oceans'

problems and our more immediate needs, particularly the protection of coastal fisheries stocks and access to the raw materials on the seabed. This reevaluation will take into account the strong preference of many members of Congress for an extension of coastal fisheries jurisdiction to 200 miles, the nearly universal acceptance by the Conference of the 200-mile economic zone, and the need to construct an interim policy which encourages the timely conclusion of a comprehensive Law of the Sea Treaty in the interests of all nations.

Because of the concern of many members of Congress with our immediate oceans' needs during the next few weeks I and others will be consulting closely with this and other interested committees of both Houses. As a responsible nation and a good neighbor, we will also be consulting with our immediate neighbors and other affected nations.

We hope to complete our study and consultations by, or soon after, the August Congressional recess at which time we will submit to the Congress not only our recommendations concerning interim legislation, but also a full and frank evaluation of the factors that we have weighed. This evaluation will not be a brief for our

conclusions, whatever they may be. Rather, it will be as objective as possible and will lay before you the many factors which both the Congress and the Executive must weigh.

We wish to make clear that we do not preclude any particular result to our reevaluation, including the principal proposals now pending before the Congress. We ask only that together we plan an interim policy which will be most effective in meeting our interim oceans needs and encouraging a satisfactory long-run solution through a comprehensive Law of the Sea Treaty.

Despite the disappointment with respect to the pace and timing of the Conference work program, the Geneva session made progress and, in some respects, substantial progress. Most significantly, the will to negotiate, which had been largely missing at Caracas, was in greater, if not universal, evidence. There was no general debate and negotiations in small, informal groups of principally interested states largely replaced less useful restatements of positions in the Committees of the whole. This increased will to negotiate led directly to the most important achievement of the session: the preparation of a single negotiating text on virtually all subjects before the Conference. This informal single

text has been given to your Committee Staff for inclusion in the record of this Hearing, if you so desire. The single text was prepared by the Chairman of each of the three Committees pursuant to a formal Conference decision. Although the single text is not a fully negotiated or consensus document, it is in important respects, at least in regard to Committees II and III, an indication of an overall package necessary for a satisfactory treaty. Moreover, in many areas, for example the articles on baselines, innocent passage in the territorial sea, the high seas, and many general articles on the protection of the marine environment, for the most part the single text reflects broad consensus. On other issues, for example the economic zone and transit of straits, it largely reflects areas of broad support negotiated within informal working groups. In some other respects, particularly in Committee I which deals with the difficult problem of a regime and machinery for deep seabed mining, in our opinion the single text did not reflect the kind of accommodation necessary for agreement.

Even though it is not a negotiated or consensus text, the preparation of the single text is a significant

and necessary step toward a treaty. For the first time, the Conference will be able to focus on a specific text rather than a multitude of alternatives and national proposals. And for the first time it will be possible to study the overall relationships inherent in a comprehensive package agreement. Though no government, including our own, will be completely satisfied with the content of the single text, it now makes more rapid Conference progress possible. I believe that for the most part, at least for the work of Committees II and III, it also reflects a widely shared view about the nature of the overall package in a manner conducive to the achievement of a realistic and widely acceptable Treaty.

The Conference on the Law of the Sea is one of the most complex and important negotiations in our history. It touches the raw nerves of national interests in almost all nations of the world, and particularly of the United States which has perhaps the largest and most diverse oceans interests of any nation. Our disappointment at the pace of the negotiations is genuine and requires a careful re-thinking of our interim policy. But it is equally necessary in reformulating a realistic interim

policy that we not lose sight of our shared commitment to a comprehensive treaty. A treaty which fully protects the vital interests of the United States and of the world community as a whole is in the interest of all nations. We will continue to do our part to encourage such an agreement.

Mr. Chairman, in view of the strong interest of this subcommittee in the deep seabed negotiation, let me reiterate here the firm commitment of the United States to guaranteed non-discriminatory access under reasonable conditions to the ocean's seabed minerals beyond the limits of national jurisdiction. We have repeatedly indicated that we cannot agree to a treaty that does not achieve that objective.

I believe that the common purpose that has sustained the Law of the Sea negotiations through its difficult, time-consuming early stages is intact. That purpose is the shared conviction of leaders from all parts of the world that law, not anarchy, will best serve man's future in the oceans. The real problems of nations that make this negotiation difficult will not disappear if we do not succeed; they will become worse. There are, of course, basic differences in national interest and the sense of urgency of resolving

our ocean's problems, as well as basic differences of perception on how best to protect common interests. But no one, I believe, would willingly choose the course of chaos in which even great power prevails at great cost.

Thank you, Mr. Chairman.

June 6, 1975

Statement by
David H. Wallace
Associate Administrator for Marine Resources
National Oceanic and Atmospheric Administration
U. S. DEPARTMENT OF COMMERCE
before the
Committee on Commerce
UNITED STATES SENATE

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify this morning on S. 961. As other members of the Administration have stated in recent testimony, the executive branch is presently reviewing its policy following the Geneva session of the Law of the Sea Conference. The creation of a 200-mile area of extended fisheries jurisdiction over coastal species of fish, without fisheries management authority, will not give us the opportunity to establish sound management programs over these coastal resources to assure conservation of fish stocks and permit development of efficient methods of utilization to ensure that valuable protein is not wasted.

I would like to direct my comments this morning to the management of the coastal species within a 200-mile fishery zone in general. I will not therefore discuss the well-known U.S. position regarding anadromous fish, such as salmon, or highly migratory species, such as tuna, or other law of the sea questions such as optimum utilization and traditional fishing.

Some fish resources of the U.S. are in trouble. Reports from our scientists on the status of the stocks show serious overfishing on many of our most valuable species. For these the catch level peaked several years ago and has been declining steadily ever since. Some suggest that all the problems with U.S. fisheries are the result of excessive foreign fishing. This is not entirely correct. While

much of the overfishing has been caused by foreigners, there are instances where domestic overfishing has caused serious damage. To effectively manage and conserve fish resources, both foreign and domestic fishermen must come under a management regime. New mechanisms are required for conservation of fish resources. Therefore, creation of a 200-mile fisheries zone is not enough; it must be coupled with a domestic management regime which can effectively regulate the harvesting of fish whether done by foreign or domestic fishermen. Let me emphasize that our objectives are the same as yours. We want to protect the fish resources to ensure their survival at optimum levels which in turn will provide an opportunity for recreational and commercial fishermen to catch more fish on a continuing basis, and for consumers to buy more fish for the dinner table at a fair price.

We in NOAA have been studying the implications for effective management of fisheries in a 200-mile zone, the kind of legislative authority required, and the necessary management tools to adequately protect the living marine resources. A staff report titled "Fisheries Management Under Extended Jurisdiction, A Study of Principles and Policies" was recently prepared at my direction and distributed widely for comment. I would emphasize at this time that many of the points which follow have neither been finalized nor fully

discussed or coordinated within the executive branch. I would welcome the opportunity to keep this Committee continuously informed. Based on this report and the preliminary comments and discussions we have had with State and commercial and recreational fishing industry leaders, we have identified three major components of a management regime.

The regime first must have a system for data collection and analysis. The data must include accurate and timely information on catch. The catch data supplemented by resource surveys will be the basis for assessing the condition of the resources and the effects of fishing on the stocks. We must also have information on the economics of the harvesting and processing industries, and we must know about the employment in these segments in order to evaluate the impacts of any proposed regulations.

Second, the regime must have a mechanism for policy determinations and formulation of regulations. This component must consider individual, State, national, and international problems; it must be decisive and equitable in the decisions made in such areas because such decisions can affect people and how they make a living. The States should have a strong role in the development and implementation of management plans. Counting the commercial and recreational catch together, about 70 percent of today's domestic harvest is taken

within 3 miles of shore. States already have a capability for management which should be utilized insofar as is feasible and practical.

Third, the regime must have means to enforce the regulations and adjudicate violations as appropriate.

It is a basic principle in the management of any wild animal populations that the stock, or population, be managed as a unit throughout its range. The 70 percent of the domestic harvest within 3 miles of shore is mostly comprised of stocks that migrate across the boundary of the 3-mile territorial sea or the boundaries of adjacent States. There should be a single focus to manage each stock throughout its range. This focus could be vested in a regional mechanism with implementation by appropriate state and Federal authorities. For those fish stocks living farther out to sea, the Federal Government must have ultimate management responsibilities, but with substantial regional input.

Management of stocks which move along our coasts between States may require a system of strong regional fisheries organizations. This concept has been supported by almost all of those who have had the opportunity to comment on the Extended Jurisdiction Staff Report. The problems may be local, State, national, or international in scope, but their solutions may be best developed in the region by those most intimately concerned.

The three existing Marine Fisheries Commissions could serve in an advisory role, but it is our view and that of a number of those who reviewed the Report that the Commissions should not be the regional fisheries management mechanism. In addition, there must be some formal mechanism for obtaining advice from concerned groups, commercial and recreational fisheries, environmental groups, and the general public.

Ideally, the States involved should get together for joint management, but to date effective interstate action has been most difficult. Much of the difficulty lies with the lack of uniform legislation which would enable the States to function effectively in interstate or State-Federal management programs, such as we envision under a regional concept. This problem has been recognized and, under contract from the National Marine Fisheries Service, the Council of State Governments has been working on Model State Legislation to overcome this barrier. A review of the proposed model legislation will be held by the Council this month in Hyannis, Massachusetts. I cannot overemphasize the need for the States to adopt this model legislation if their existing legislation is not consistent with it.

In any event, we believe that an effective regime would provide authority to control the fishing activities of all fishermen, both foreign and domestic operating within the fisheries zone. This authority would include power to assess reasonable fees.

The whole question of enforcement and surveillance is a complex one particularly in determining how much is enough and what is the best combination of methods to use. We are currently working very closely with the Coast Guard and other Federal agencies on a thorough analysis of the entire problem.

The management of the United States coastal fisheries is complex. The fish stocks are many and varied. We must develop fisheries management plans, each tailored to specific needs of regional fisheries problems and prepared cooperatively with the States with advice and input from affected local interests. The Federal Government must hold a position of general leadership and authority for regulating the fisheries, but management must also be exercised in concert with the State Governments. This approach should lead to the development of rational, uniform management programs.

Mr. Chairman, I will be pleased to try to answer any questions the Committee may wish to ask. Thank you.

Preliminary Draft

Statement by
David H. Wallace
Associate Administrator for Marine Resources
National Oceanic and Atmosphereic Administration
U. S. DEPARTMENT OF COMMERCE
before the
Committee on Commerce
UNITED STATES SENATE

June 6, 1975

Re: S. 961

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify this morning. I welcome this chance to present our views on what is probably the most significant event to affect the fisheries of the United States in the history of our Nation--the establishing of a 200-mile exclusive fisheries zone. Rather than comment on the specifics of S. 961, I would prefer to give you our views on the management of fisheries under the concept of a 200-mile exclusive fisheries zone.

Let me say at this point that control of fish stocks is essential whether it is attained by LOS action or by separate action of the Congress. Further, we believe that control over coastal fish and shellfish resources within the 200-mile zone must also include authority to manage these resources. This approach presents the United States with a unique opportunity. We will have control of the largest and most valuable fish and shellfish resources available to any nation in the world. Coupled with an effective management regime, it would give us the opportunity to establish sound management programs over these coastal resources to assure conservation of fish stocks and to permit efficient methods of utilization.

Some fish resources of the United States are in trouble. Status of the stocks reports show serious overfishing on many of our most valuable species with most of the catches peaking several years ago

and declined steadily ever since. Much, but not all, of this decline is a result of excessive foreign effort off our coasts and the failure of existing international agreements to protect these resources adequately. Indeed, there is a feeling by some that the only problem with the coastal U.S. fisheries is as a result of foreign fishing. This is not entirely correct. While much of the overfishing has been caused by foreigners, there are instances where domestic overfishing has caused serious damage. To effectively conserve the fisheries resources, both foreign and domestic fishermen must come under the management regime. New mechanisms are required and the 200-mile exclusive economic zone will in our estimation provide the needed framework for conservation.

However, simple declaration of a 200-mile exclusive zone is not enough ; it must be coupled to a management regime which can effectively regulate the harvesting of fish whether done by foreign or domestic fishermen. Let me emphasize that our objectives are the same as yours. We want to protect the fish resources to ensure their survival at optimum levels which in turn will provide an opportunity for our recreational and commercial fishermen to catch more fish on a continuing basis, and for our consumers to buy more fish for the dinner table at a fair price.

We in NOAA have been studying the implications for effective management of fisheries in a 200-mile zone, and the kind of legislative authority required to provide the necessary management tools to adequately protect the living marine resources and enhance the domestic fisheries of the United States. A staff report titled "Fisheries Management Under Extended Jurisdiction, A Study of Principles and Policies" was recently

prepared at my direction and distributed widely for comment. Based on this report and the comments and discussions we have had with State and industry leaders, we have identified three major components of the commercial and recreational fishing management regime.

The regime first must have a system for data collection and analysis. The data must include accurate and timely information on catch. The catch data supplemented by resource surveys will be the basis for assessing the condition of the resources and the effects of fishing on the stocks. We must also have information on the economics of the harvesting and processing industries, and we must know about the employment in these segments in order to evaluate the impacts of any proposed regulations.

Second, the regime must have a policy determining and regulating component. This component must consider individual, State, national, and international problems; it must be decisive and equitable in the decisions made in such areas because such decisions can affect people and how they make a living.

Third, the regime must have means to enforce the regulations and adjudicate violations, at State, national, and international levels as appropriate.

Management of stocks which move across jurisdictional boundaries requires a system of strong regional fishery organizations. This concept is supported by almost all of those who commented on the Extended Jurisdiction Staff Report. The problems may be State, local, or national in scope, but their solutions are best developed in the

region by those most intimately concerned with appropriate Federal review. There is general agreement that Regional Marine Fisheries Councils, consisting of State and Federal representatives, should be established to develop the management plans for each of the fisheries in a region.

It is also accepted generally that such councils should represent or correspond to distinct geographic areas. The three existing Marine Fisheries Commissions could serve in an advisory role to some of the councils, but it is our view and that of a number of those who reviewed the Report that the Commissions should not be the regional fisheries management organization. Some reviewers have disagreed on the composition of the councils, but it is our view that they should be composed of representatives of the State agencies responsible for management of marine fisheries, along with appropriate representatives of the Federal Government. In addition, there must be some formal mechanism for obtaining advice from concerned groups, commercial and recreational fisheries, environmental groups, and the general public.

The States must have a strong role in the development and implementation of management plans. Counting the commercial and recreational catch together, about 70 percent of today's domestic harvest is taken within 3 miles of shore. States already have a capability for management which should be utilized insofar as is

feasible and practical.

For example, the States now have the major enforcement capability for domestic fisheries, and they should be encouraged and aided to continue this function under extended jurisdiction where feasible. Increased State activities will require additional funding which will be a problem for most States. This problem should be examined and dealt with in any future partnership arrangement.

It is a basic principle in the management of any wild animal populations that the stock, or population, be managed as a unit throughout its range. The 70 percent of the domestic harvest within 3-miles of shore is mostly comprised of stocks that migrate across the boundary of the 3-mile territorial sea or the boundaries of adjacent States. There must be a single focus to manage each stock throughout its range. This central focus can be vested in the Regional Councils, with implementation by appropriate state and Federal authorities. For those fish stocks living primarily outside State jurisdiction, the Federal Government must have ultimate management responsibilities, but with substantial advice and assistance from Regional Councils.

Ideally, the States involved should get together for joint management, but to date effective interstate action has been most difficult. Much of the difficulty lies with the lack of uniform legislation which would enable the States to function effectively in interstate,

or State-Federal management programs, such as would be envisioned under the Regional Council concept. This problem has been recognized and, under contract from the National Marine Fisheries Service, the Council of State Governments has been working on Model State Legislation to overcome this barrier. A review of the proposed model legislation will be held by the Council this month in Hyannis, Massachusetts. I cannot over-emphasize the need for the States to adopt this model legislation if their existing legislation is not consistent with it.

The creation of the 200-mile economic zone will give to the United States preferential rights to coastal fish resources and we expect to exercise positive control of the foreign fishermen who wish to utilize these resources. We must create the situation which will permit United States fishermen to take up to their potential within the limits of the resource. If our fishemen, commercial and recreational, can properly utilize the stocks, additional fishing by foreign fishermen would be phased out consistent with our existing treaty obligations.

It is our view that foreign fishermen should pay for the privilege of participation in our coastal fisheries. This would include a fair share of all the costs of management (research, administration, and enforcement) and possibly a fee for resource exploitation as well. In addition, they must be required to provide all of the catch information required by the management regime. This might well be best accomplished by placing observers on each vessel to collect the data and observe the operations. In this way, we could reduce the need for greatly expanded and expensive aircraft and surface vessel surveillance. Also, we may wish to require notice from foreign fishing vessels when

they enter and leave our 200-mile zone.

The whole question of enforcement and surveillance is a complex one particularly in determining how much is enough and what is the best combination of methods to use. We are currently working very closely with the Coast Guard and other Federal agencies on a thorough analysis of the entire problem.

So far I have been talking about the management of our coastal stocks and have not commented on the management of the anadromous stocks of salmon or the highly migratory species such as tuna that cross the 200-mile lines. The management of these will require international action in addition to a State-Federal interaction for their management within the 200-mile zone.

Our ~~basic~~ position in the Law of the Sea Conference has been that the basic responsibility for management of anadromous species must be lodged in the country where the fish originate. Furthermore, the fishing should be primarily confined to the exclusive fisheries zone. However, it is obvious that certain historical fisheries have existed within this 200-mile zone and these cannot be summarily eliminated. ~~or the high seas.~~ Provision must be made for appropriate international arrangements which would provide for dealing with these offshore fisheries, in the interests of conservation and the domestic fishermen.

We must also provide in this legislation a mechanism which will aid our fishermen who are fishing for highly migratory species off the coasts of other countries. Our tuna fleet is composed of some of our most sophisticated fishing vessels and has

been and remains firmly that the highly migratory species, such as the tunas, must be managed in the interest of conservation and equitable sharing of the stocks by international bodies with authority to make adequate regulations to accomplish these goals. Furthermore, we must provide the atmosphere which will allow our Government to negotiate appropriate bilateral and multilateral agreements with other countries for access to a share of fisheries off their coast.

The management of the United States coastal fisheries is complex. The fish stocks are many and varied and the people who harvest and process the catch are equally so. Provision must be made for the development of fisheries management plans, each tailored to specific needs of regional fisheries problems, and prepared cooperatively with the States with advice and input from affected local interests. The Federal Government must hold a position of general leadership and authority for regulating the fisheries but it must also be exercised in concert with the State Governments. This should lead to the development of rational, uniform management programs.

Mr. Chairman, I will be pleased to try to answer any questions the Committee may wish to ask. Thank you.

Department of Transportation

U.S. Coast Guard

Statement by

Admiral Owen W. Siler, Commandant, U. S. Coast Guard

Senate Commerce Committee

Washington, D.C.

June 6, 1975

Mr. Chairman and members of the Committee:

I am Admiral Owen W. Siler, Commandant of the United States Coast Guard. As you know, the administration is currently undertaking a review of our fisheries policy in the light of the recently concluded Geneva session of the Law of the Sea Conference. With this in mind, I will be pleased to comment today on fisheries enforcement within a 200 mile fisheries zone in general.

The Coast Guard will in the long run be more affected by any regulations actually imposed on fishing vessels than by an extension of the fisheries zone. Those regulations will probably change from time to time depending upon such things as the status of the fish stocks off our coasts, the availability of protein from other sources, and the harvesting capacity of the U.S. coastal fishing fleet. Probability of violation will vary with such things as the status of fish stocks in other parts of the world, the attitude of other coastal nations toward foreign harvesting of their coastal stocks, and the degree of acceptance of the regulations by the nations whose vessels are fishing off our coasts.

This makes it particularly difficult to develop resource requirements for an enforcement program. However, with that fact in mind, our planning for an enforcement program is designed to be (1) realistic (2) useable with any foreseeable form of fisheries jurisdiction and (3) reasonably compatible with any enforcement and surveillance methods that may become available and any regulations that are actually imposed on fishing vessels.

The main thrust of our planned approach would provide various levels of coverage for known active fishing areas in direct proportion to the experienced intensity of fishing activity, i.e. our enforcement efforts would concentrate on those areas where and when the fishing will most likely be done. A mix of long and medium range aircraft would patrol the areas to monitor fishing activity and provide fishing vessel locations to cutters on fisheries patrol. A mix of high and medium endurance cutters, with helicopters embarked whenever possible, would be used to monitor fishing activity through examination from the helicopter and the cutter itself as well as through appropriate boardings. The cutters would also make seizures when appropriate under the circumstances.

This part of our approach is very similar to our current efforts under:

a. The International Convention for Northwest Atlantic Fisheries (16 USC 986)

b. The International Convention for the High Seas Fisheries of the North Pacific Ocean (16 USC 1027)

c. Enforcement of the prohibition on foreign taking of Continental shelf fishery resources (16 USC 1083)

We have developed composite position plots of foreign fishing vessels for the last three years. The patterns change from time to time and new fisheries develop, but there is no reason to believe that these active fishing areas would change dramatically following a change of jurisdiction. Our belief is bolstered by available information on the range of coastal and anadromous fish species.

In addition to the coverage of known active fishing areas, some coverage to the full range of jurisdiction would be provided to determine if changes in patterns of fishing activity are occurring, to make our presence known throughout the area, to detect entry into the fishery zone, and to facilitate apprehension as necessary.

In addition to current operational planning, we are involved in simultaneous efforts aimed at supplementing our enforcement effort through the use of existing detection systems as well as R&D projects for alternate surveillance technologies. By congressional mandate we are, in cooperation with the Departments of State, Defense, Commerce, Treasury and Justice, conducting a comprehensive study of all feasible methods of enforcing an extended fishery management jurisdiction. Although this study must include consideration of alternate detection systems, we see it as more far reaching in that it will emphasize an interdepartmental systems approach to enforcement which will minimize duplication of effort and make appropriate use of all technologies. In the meantime we are investigating with Chief of Naval Operations the possibility of establishing an interagency consortium on commercial shipping information. The proposed mission of the consortium facility would be the processing, analysis and reporting of information relating to movements and

operations of fishing vessels.

In our analysis of the problem we have considered the possible future use of satellites. We think that it may eventually be technologically possible for satellites to be used for detection, interrogation and communications.

In the detection mode large ocean vessels and ocean vessel concentrations might possibly be detected from space with a high resolution imagery system. Interrogation could be accomplished by placing a transponder on all commercial fishing vessels, both foreign and domestic. Activated by satellite interrogation, the transponder through individual codings could ascertain the identity of all cooperating commercial fishing vessels within a relatively large ocean area.

As a communication link, satellites offer high reliability over great distances which in turn offers considerable benefit to the Coast Guard Enforcement of Laws and Treaties mission. The politically volatile nature of Coast Guard fisheries enforcement and the ever present danger of confrontation makes reliable and secure communications between patrol units and higher echelon command necessary. Provisions for satellite communications capability aboard our major vessels for fisheries enforcement is being considered. Whether considering satellites or transponders it should be understood that, at least at this point in technological time, such devices would provide only detection capability. This capability, while aiding in the determination of the most effective

deployment of air and surface facilities for on scene surveillance, is not a substitute for local operations. Though our planned approach involves conventional aircraft and ship-helo combinations for on-scene operations, we are considering R&D projects which would look to new concepts involving high performance watercraft, lighter than air craft and possibly remotely controlled aircraft.

STATEMENT BY THE HONORABLE JOHN NORTON MOORE, CHAIRMAN
NSC INTERAGENCY TASK FORCE ON THE LAW OF THE SEA AND
DEPUTY SPECIAL REPRESENTATIVE OF THE PRESIDENT FOR THE
LAW OF THE SEA CONFERENCE AND UNITED STATES REPRESENTATIVE
TO THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA
BEFORE THE HOUSE ARMED SERVICES COMMITTEE, SUBCOMMITTEE
ON SEAPOWER AND STRATEGIC AND CRITICAL MATERIALS

JUN 9 1975

Mr. Chairman:

I appreciate the opportunity to appear before this Subcommittee for the first time to report on the activities at the Third United Nations Conference on the Law of the Sea. Accompanying me today from the Department of Defense are Mr. Stuart P. French of International Security Affairs, and Rear Admiral Max K. Morris of the Joint Chiefs of Staff.

Mr. Chairman, in 1970, the United Nations scheduled a comprehensive Conference on the Law of the Sea. Since then six preparatory sessions, one organizational session and two substantive sessions have been held. The second substantive session of eight weeks duration was recently concluded in Geneva. The Conference has agreed to recommend to the General Assembly that the next session be held for eight weeks begining on March 29, 1976 and that the Conference then decide whether an additional session is needed during the summer of 1976. Though such a schedule could permit concluding a treaty during 1976 if there is sufficient will to do so, it is not clear that this will

happen. I would not be frank with this Committee if I did not express my disappointment that a target date to conclude a treaty was not agreed by the Conference despite what seems to be a majority sentiment for conclusion during 1976.

The substantive work of the Conference takes place in three main committees. The first Committee deals with the international regime and machinery for the seabed area beyond national jurisdiction. The third Committee mandate includes preservation of the marine environment, scientific research and transfer of technology. The second Committee is responsible for the more traditional law of the sea topics -- territorial sea, straits, continental shelf, fisheries and related matters.

The most important achievement of the Geneva session that was attended by more than 140 States was the preparation of a single negotiating text on virtually all subjects before the Conference. This informal single text has been given to your Committee Staff for inclusion in the record of this Hearing, if you so desire. The single text was prepared by the Chairman of each of the three Committees pursuant to a formal Conference decision. Although the single text is not a fully negotiated or consensus document, it is in important respects, in regard to Committees II

and III, an indication of an overall package necessary for a satisfactory treaty. Moreover, in many areas, for example the articles on baselines, innocent passage in the territorial sea, the high seas, and many general articles on the protection of the marine environment, the single text for the most part reflects broad consensus. On other issues, for example the economic zone and transit of straits, it in most parts reflects areas of broad support negotiated within informal working groups. In some other respects, particularly in Committee I which deals with the difficult problem of a regime and machinery for deep seabed mining, in our opinion the single text does not approach the kind of accommodation necessary for agreement.

Even though it is not a negotiated or consensus text, the preparation of the single text is a significant and necessary step toward a treaty. For the first time, the Conference will be able to focus on a specific text rather than a multitude of alternatives and national proposals. And for the first time it will be possible to study the overall relationships inherent in a comprehensive package agreement. Though no government, including our own, will be completely satisfied with the content of the single text, it now makes more rapid

Conference progress possible. I believe that for the most part, for the work of Committees II and III, it also reflects a widely shared view about the nature of the overall package in a manner conducive to the achievement of a realistic and widely acceptable Treaty.

This Subcommittee is particularly interested in freedom of navigation and unimpeded transit through, over and under straits used for international navigation. I am pleased to report that there is near universal support for freedom of navigation in the 200-mile economic zones contemplated in the treaty. Moreover, there is a strong trend in favor of unimpeded transit in the normal mode for all vessels and aircraft in straits used for international navigation. These developments bode well for the Conference as the United States has repeatedly stated that accommodation of its navigational objectives was essential for an acceptable agreement. I would like to reiterate here our vital interests require that agreement on a 12-mile territorial sea must be coupled with agreement on unimpeded transit of straits used for international navigation and that these remain among the basic elements of our national policy which we will not sacrifice.

I believe that the common purpose that has sustained the Law of the Sea negotiations through its difficult, time-consuming early stages is intact. That purpose is the shared conviction of leaders from all parts of the world that the law, not anarchy, will best serve man's future in the oceans. The real problems of nations that make this negotiation difficult will not disappear if we do not succeed, they will become worse. There are, of course, basic differences in national interest and the sense of urgency of resolving our ocean's problems, as well as basic differences of perception on how best to protect common interests. But no one, I believe, would willingly choose the course of chaos in which even great power prevails at great cost.

Thank you Mr. Chairman.

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301

INTERNATIONAL SECURITY AFFAIRS

Statement of Stuart P. French, Principal Assistant to the Assistant Secretary of Defense, International Security Affairs and Director, Law of the Sea Task Force of the Office of the Secretary of Defense, before the Seapower Subcommittee of the House Committee on Armed Services

9 June 1975

Mr. Chairman and members of the Seapower Subcommittee, it is a pleasure for me to appear before you to discuss the national security issues involved in the current negotiations which have as their purpose the creation of a comprehensive treaty on the Law of the Sea.

You can, I am sure, readily appreciate the fact that there are a number of nuances and close interrelationships involved in these national security issues but briefly stated they consist of the following:

1) an extension of the breadth of the territorial sea to a maximum of 12 nautical miles;

2) preservation of freedom of navigation overflight and other reasonable uses of the high seas in all areas seaward of the territorial sea;

3) preservation of the right of unimpeded passage in the normal mode without notification or authorization and without differentiation between vessels of varying characteristics through, over and under those straits used for international navigation connecting high seas

to high seas which would become overlapped as territorial seas under an extension of the territorial sea to 12 nautical miles;

4) freedom of investigation of the oceans' phenomena unrelated to research involving resources;

5) because of their inability to comply in all instances, a military exemption for ships and aircraft entitled to sovereign immunity under international law from certain pollution control and abatement measures; and,

6) to avoid having to provide classified information to any juridical system established by the treaty, an exemption for certain military activities from the compulsory dispute settlement provisions.

Needless to say, I am really quite encouraged over the general acceptance by the Conference of the need for accommodation on these issues as reflected by the single negotiating text which was issued in the waning days of the Geneva session. Although the single text is by no means ideal from our standpoint, nevertheless, it does demonstrate a developing general awareness that these needs are as much in the interests of the developing countries as they are in the interests of the maritime states, particularly since more than 90% of the world's international trade is transported by sea. For example, it was once generally believed that our insistence upon preserving unimpeded transit of straits connecting high seas to high seas was dictated solely by military considerations in maintaining the nuclear deterrent. Now, however, it is generally recognized that the

international community cannot permit unilateral decrees to be enacted by which a ship may be denied passage through such straits simply because it is a tanker, or is nuclear propelled or is carrying cargo destined for a nation on less than friendly terms with the state through whose straits it must pass.

Although encouraged by the progress and acceptance of these national security issues, I must confess that my cautious optimism does not extend to certain of the resource issues which, if not resolved, could result in a complete failure of the Conference. This would, as others will testify, be most unfortuante since it is generally conceded that our security interests are better protected with a treaty which safeguards those interests.

Thank you, Mr. Chairman.

Statement of Stuart P. French, Principal Assistant to the Assistant Secretary of Defense, International Security Affairs and Director, Law of the Sea Task Force of the Office of the Secretary of Defense, before the Seapower Subcommittee of the House Committee on Armed Services

9 June 1975

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3) preservation of the right of vessels and aircraft to unimpeded transit in the normal mode -- without notification or authorization and without differentiation between vessels of varying characteristics -- through, over and under those straits used for international navigation;

4) because of their inability to comply in all instances, a military exemption for ships and aircraft entitled to sovereign immunity under international law from certain pollution control and abatement measures; and,

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Although much work remains to be done the preparation of the single negotiating text should enable more rapid progress on a Conference Law of the Sea Treaty in the interest of all nations.

Thank you, Mr. Chairman.

STATEMENT BY
REAR ADMIRAL MAX K. MORRIS, USN
BEFORE THE
SUBCOMMITTEE ON SEAPOWER
HOUSE ARMED SERVICES COMMITTEE
9 JUNE 1975

Mr. Chairman,

I am pleased to be with you today, and to have the opportunity to present my views as Joint Chiefs of Staff Representative, Law of the Sea, on the status of the LOS negotiations, and how the national security interests involved are faring.

I believe it might be helpful first to review briefly what those interests are, and how the national security is affected.

As the Chairman of the Joint Chiefs of Staff has said, the major US national security interest in the seas is maximum mobility for our operations, free of interference by others.

The mobility of strategic and general purpose forces becomes a more important factor in our security as the presence of our forces on foreign territory is reduced.

Our strategic forces must be numerous enough, efficient enough, and deployed in such a way that a potential aggressor will always know that the sure result of any type of nuclear attack against the United States is unacceptable damage from our retaliation. As an indisputable element of our strategic forces, the United States seaborne nuclear deterrent is dependent not only upon freedom of mobility in the oceans and through international straits, but upon secrecy. The ability of these deterrent forces to carry out their mission cannot be dependent upon the sufferance of other nations who may perceive their interests as different from ours.

Our general purpose forces also play a larger role now in deterring attacks than at any time since the nuclear era began. Like our strategic seaborne forces, our general purpose air and naval forces depend upon maximum mobility, and sometimes secrecy, for their operations, free of interference by others. This mobility will be particularly important to deter or respond to localized aggression during a period of decreasing overseas presence. Our mobility depends on freedom to navigate and operate on, under, and over the high seas, and to transit through, under, and over, international straits. Any authority for a coastal or strait State to impede these movements would

degrade our mobility. Operations such as the recent recovery of the Mayaguez are possible only so long as we maintain the existing rights of movement which enable us to be on the spot when needed. I might pause here to note that the Mayaguez incident illustrates that the United States is absolutely serious about the freedom of the seas both now and in the future.

Our antisubmarine warfare activities involve surface, air, and subsurface units that must be able to continue to function freely outside a narrow band of territorial sea if our ability to track submarines which may pose a threat to our security is to remain undiminished.

With this background, it is appropriate to assess the relationship of these interests to the Law of the Sea negotiations. We should recall that one of the essential elements of the United States position since the very beginning of the negotiations has been protection of our national security interests. Developments related to the oil embargo have brought more sharply into focus our resource interests in the negotiations. It is my belief that all of our interests - resource as well as security - will best be served by a comprehensive and widely accepted international treaty.

The recent Geneva session has been criticized in some areas of government, and widely in the press, as a failure. I do not agree. The executive branch is currently involved in an in-depth, overall assessment of present status and future prospects for the negotiations, and I would in no way wish to prejudge the outcome of that assessment. I do believe, though, that it is important at this time for me to bring to the attention of the Subcommittee the fact that there are some obvious good points as well as some obvious disappointments that emerged from the Geneva session.

On the plus side, even from merely the procedural point of view, the Geneva session did produce a single negotiating text. This in itself is a welcome development, for one of the great difficulties in translating disparate national positions into a widely acceptable treaty has been the absence of a common point of reference.

On the substance of the text, we must be somewhat cautious pending the full assessment which I mentioned. In addition, we must bear in mind that the text is officially styled as a negotiating rather than a negotiated text. That is, it is a document to negotiate from rather than one which reflects agreement binding on anyone. Nevertheless, in Committees it would be unrealistic to ignore the potential consensus which underlies at least

certain portions of the single text. From the national security point of view, there are two areas of particular significance.

First, by providing for a 12 mile territorial sea, the text reflects a definitive overwhelming rejection of those trying for a 200 mile territorial sea.

Secondly, by providing for a regime called "transit passage," for international straits, the text reflects what we have seen as a growing consensus that the regime of passage through under and over such straits must be different in nature than the regime of passage in the territorial sea in general. Though the straits text does not embody our approach to free transit, it does provide a reasonable basis for further negotiations to develop a final set of articles. As you know, Mr. Chairman, a clear and unambiguous guarantee of unimpeded transit of straits is an essential element of a satisfactory law of the sea treaty.

On the disappointing side, I would cite parts of the text relating to the economic zone, and the Chapter relating to the deep seabeds, as the more obvious problem areas.

The United States approach since the beginning of the negotiations has been that coastal state jurisdiction

over resources beyond a narrow territorial sea must be only that which is specifically granted by the treaty. While this would grant all coastal states, including the United States, all the jurisdiction they are seeking over living and non-living resources, it would preserve to the international community the residual rights in the economic zone, that is, other uses of the seas which would continue to be exercised with reasonable regard to the coastal state's resource rights. While the text on the economic zone, as I mentioned, does not establish a territorial sea as such, I am not convinced that its present formulation would not result in more non-resource jurisdictional competence in the coastal state than the United States, as a member of the international community, can accept.

As to the deep seabeds text, I believe that most would agree that it is not a satisfactory basis for negotiation. There is some reason to believe, based on the actual work of the committee during the Geneva session, that the text produced does not accurately

reflect the compromises which many developing countries are in fact willing to make in order to team up with the United States and other industrial states to develop seabed resources. I believe that the text prepared by the Chairman reflects only the publicly stated views of the few very extreme developing countries and does not contain areas of potential consensus as do the other Committees' texts. We must find a way to break this impasse.

Mr. Chairman, I have described the national security interests which we are seeking to protect, and some of the more salient plus and minus factors of the results we have encountered thus far. I continue to believe that these interests can be protected best in a comprehensive and widely accepted treaty. I must emphasize that this does not mean that just any treaty would suffice. Should it become apparent, either as a result of the on-going assessment, or as a result of future developments, that it is not possible to achieve a treaty with adequate protection for our vital security interests, it will be necessary to embark on a positive program of safeguarding our interests in the era of conflicting unilateral claims that is sure to ensue. I am confident that with

the continued support of the Congress in general, and this committee in particular, the Armed Forces of the United States will accomplish whatever tasks are required to achieve these objectives, through a treaty.

STATEMENT OF LEIGH S. RATINER
ADMINISTRATOR, OCEAN MINING ADMINISTRATION
DEPARTMENT OF THE INTERIOR
FOR THE
SENATE FOREIGN RELATIONS COMMITTEE
SUBCOMMITTEE ON OCEANS AND INTERNATIONAL ENVIRONMENT
June 10, 1975

This statement is provided in response to the Chairman's request for my views on the negotiating problems and highlights of the work in Committee I during the Geneva Session of the Law of the Sea Conference. These are preliminary views since the Law of the Sea task force is now in the process of carrying out a thorough review of the single negotiating texts.

The Geneva Session differed from previous sessions of the Conference in that Committee I engaged in wide-ranging discussions and negotiations on all of the subjects and issues within its mandate -- the legal regime for the international seabed Area, the international machinery to be established, and the basic conditions of exploration and exploitation which would be annexed to the treaty. The basic conditions would describe the fundamental procedures for acquiring exploitation rights and would provide precise guidelines and objective criteria for the international seabed resource Authority to use in developing its detailed rules and regulations.

Much of the work of Committee I during the Geneva Session was carried out in the Committee I "Working Group of 50" under the chairmanship of Dr. Christopher Pinto of Sri Lanka, or in private and small group negotiations conducted by Dr. Pinto at the request of Mr. Paul Engo of the Cameroon who is chairman of Committee I. The mandate of this "Working Group of 50," which was established toward the end of the 1974 Caracas Session by Committee I, was the preparation of treaty articles on the legal regime with particular emphasis on the system of exploration and exploitation and the basic conditions of exploration and exploitation which would be annexed to the treaty. In Geneva, Committee I itself devoted three of its sessions to general statements of delegation views on the structure, powers and functions of the international machinery to be established -- a subject which had been lying dormant in Committee I since 1973.

Most of the public discussion in the "Working Group of 50" was directed at elaborating a potential compromise system of exploration and exploitation which would accommodate on the one hand the interests of the industrialized countries in obtaining guaranteed and secure access under reasonable conditions to the resources of the seabed, and the interests of developing countries

on the other in obtaining maximum participation in the benefits of seabed mining as well as in the establishment and functioning of an international Authority which would exercise "direct and effective control" over all activities relating to seabed mining. A possible partial compromise approach which seemed to command the widest support was the contractual joint venture arrangement. After a few weeks of discussion, however, the group of 77 began to stress that the contractual joint venture system could only be seen as one alternative method of exploration and exploitation which would be available to the international Authority. The Authority would, in their view, also have to be empowered to employ a system of service contracts, or ultimately to dispense with all types of contractual arrangements and directly exploit the area to the exclusion of States and private entities.

The United States in a further attempt to bridge the gap between developing and developed countries explored a system which became known as the "banking system" pursuant to which 50 percent of the international seabed Area would be reserved to the international Authority for joint venture contracts in which the financial terms and technology transfer provisions would be freely negotiated. The other 50 percent of the Area

would also be the subject of joint venture contracts, but these latter contracts would be issued on a relatively automatic basis subject to certain qualifications and would not be subject to negotiation. In the non-reserved areas, the basic terms and conditions -- particularly the financial provisions -- would be clearly established in the treaty itself, and any applicant for a joint venture contract who qualified in accordance with treaty standards would be entitled to obtain a contract. The Soviet Union proposed a variation of the banking system in which a portion of the seabed would be reserved exclusively for States and the balance could be used by the international Authority with virtaully unlimited discretion, including the possibility of direct exploitation.

The Chairman of the Working Group of 50 attempted to reflect the U.S. and Soviet ideas in a draft of basic conditions of exploration and exploitation, but he took considerable liberties with the United States idea for a banking system. Thus, in his draft, the banking system would provide for quasi-automatic joint venture contracts for the non-banked areas and complete discretion in the Authority for the areas which were assigned to the bank. Moreover, the United States concept limited the amount of area which could be

banked by the Authority to the identical amount under contract in the non-banked areas at all times. However, under the Working Group Chairman's version, one-half of the areas which were not in the bank would be relinquished once commercial production began on a particular site. This relinquished area would also be put in the Authority's bank, thus ultimately providing for 75 percent of the area to be held in the bank by the Authority.

The spokesman for the Group of 77, after a week of internal debate in the Group of 77, rejected both the U.S. and Soviet ideas. In doing so, he also rejected the Working Group Chairman's version of the U.S. approach which, of course, was considerably more favorable to their position than was the original U.S. concept. The principal reason they gave for rejecting the proposal was that it split the common heritage of mankind into two kinds of legal regimes and this split was considered to be politically unacceptable and economically unattractive in comparison to the original Group of 77 proposals on this subject.

These draft basic conditions were almost rejected as a basis for negotiation by the Group of 77. However, instead of rejecting the Chairman's draft as a whole, the Group of 77

insisted that the U.S. and Soviet ideas be deleted and that certain other changes be made to conform the draft to the Group of 77 position in its purest form. A revised Chairman's draft was prepared which appears as Annex 1 to the single negotiating text. In its present form, it cannot be considered as a basis for negotiation, and the United States has made this clear. We also made it clear on the record in Committee I that we could in no way be associated with the development of that paper in its current form.

Based on my discussions with developing country representatives, I believe that part of their underlying thinking appears to contemplate willingness to compromise on the structure, powers, functions and voting mechanisms of the international Authority. This willingness, however, is coupled with insistence that the Authority have the ultimate power to decide the system of exploration and exploitation, including whether, if at all, to grant any contracts to States and private companies. Thus, in producing a draft of basic conditions that was heavily oriented towards the positions of the developing countries, Chairman Pinto, in my view, was probably assuming that these basic conditions would ultimately be attached as an Annex to a draft treaty

which would in many other important respects be oriented towards the positions of the industrialized countries. As I will explain, this expectation did not materialize. Moreover, if this does represent a developing country perception of where compromise will be found in Committee I, I believe it is inaccurate. We cannot, in my view, afford to trade a satisfactory resource Authority for an unsatisfactory system of exploitation.

Midway in the Geneva Session, the Plenary organ of the Conference decided to request the Chairmen of the three main Committees to prepare single negotiating texts. These texts were supposed to form the basis for future negotiations and take into account all of the formal and informal discussions held so far. The Chairman of Committee I, Paul Engo of the Cameroon, requested the Secretary of the Committee and its rapporteur to arrange to prepare a first draft of the single text. Dr. Pinto was then asked to prepare it.

The Working Group Chairman Pinto produced a first draft designed to reflect the developing countries' position on virtually all subjects in Committee I. With this draft as a starting point, he then embarked on the preparation of a second draft which would achieve the objectives of the single negotiating texts as requested by the Plenary. In this process,

he engaged in intense consultations with a number of delegations representing the widest possible spectrum of views in Committee I and representing both developed and developing countries.

About a week or so later, Mr. Engo began a more formal series of consultations with interested delegations to hear their views. Possibly because of the extreme time pressure, Mr. Engo did not incorporate into his own draft much of the substance of the revised Pinto text which reflected his consultations with others and reached Mr. Engo after the deadline which had been set for concluding consultations and receiving written proposals.

Thus, the second text prepared by the Working Group Chairman Pinto never became an official document of the Conference though it was rather widely distributed on an informal basis to most delegations. It is reasonable to believe that in light of the intense "shuttle diplomacy" carried out during the preparation of that text that it may give a clearer indication of the state of negotiations at that time than does the official single negotiating text.

It should be stressed that, from the point of view of the United States, neither of these two texts would be acceptable, although I believe that in most respects, the text which benefited from intensive behind-the-scenes consultations comes closer to the mark. The principal difficulties with the Pinto text are in my view that it provides for excessive policy-making power in the one nation, one vote Assembly of the international Authority and that it provides for a system of exploration and exploitation which is at total variance with the position of the industrialized countries. It does, however, attempt to provide for a distribution of the Authority's powers and functions and a structure and voting mechanisms which approach the stated objectives of many industrialized countries, including the United States. The informal single negotiating text also adopts the developing country approach to the system of exploration and exploitation elaborated in Annex 1, but I think accommodates to a lesser degree the United States position on questions involving the powers and functions, structure and voting mechanisms in the international Authority. For example, on one of the key areas of concern to the United States -- composition of the Council, its voting arrangements and its powers and functions, the Pinto text comes closer to accommodating United States proposals than does the informal single negotiating text.

Another area of considerable importance to the United States has been the establishment of a Tribunal with compulsory dispute settlement procedures. The Pinto text provides for a dispute settlement system which approximates U.S. objectives; the informal single negotiating text is very far removed from an acceptable dispute settlement system. There are, however, a variety of important differences between the two texts, and in several areas we might prefer the formulation in the single negotiating text.

In my opinion, it can be said that behind the scenes in Committee I there was certain important progress on the powers and functions of the proposed new international Authority. For the reasons explained above, this progress is not apparent from reading the single negotiating text in isolation. Insight can be gained from reading it together with the Pinto text. However, despite progress on the international Authority, in respect of the system of exploration and exploitation there was no progress in Committee I. It may be, however, that on this vital issue, the Group of 77 considered compromise to be premature in light of the widely held view that further negotiating sessions of the Conference were still ahead of us.

In view of the present stage of work in the Committee, it seems clear that at least one more session of the Conference

will probably be necessary to obtain a balanced single negotiating text -- a text which resolves most issues and leaves aside only a limited and manageable number of issues for further negotiation. Final compromises could then be reached subsequently.

Taking into account the sum total of activities in Committee I as reflected mainly in the May 3 Pinto text, the following major issues would appear to be moving ahead in a constructive manner:

First, there appears to be widespread understanding and support for the idea that a mechanism must be found for ensuring the earliest possible entry into force of the deep seabed portion of the treaty when it is completed, under which ocean mining could be conducted without delay;

Second, there appears to be growing understanding and support for provisions which would protect the investments of companies which have already entered into ocean mining;

Third, there is general recognition that the powers and functions of the international Authority should be

limited to regulation and management of resource-related activities (including, in the view of developing country spokesmen, scientific research concerning the resources) and should not extend to other unrelated activities or to the superjacent waters;

Fourth, there appears to be widespread support for the creation of a Tribunal for the deep seabed with the power to settle all disputes relating to activities of the exploration and exploitation of the resources of the Area at the instance of any party to a contract or any State party to the treaty;

Fifth, there is substantial sentiment in support of the idea that the basic policy of the international Authority concerning exploration and exploitation should be developed in the Council and not in the Assembly -- though there is still a wide difference of opinion on the overall and general policy-making powers of the Assembly. It should also be noted that there is support for the idea that the Council could be composed of highly industrialized countries and voting mechanisms which would arguably provide protection for their interests;

Sixth, there is some recognition that the Assembly should be circumscribed so as to avoid or minimize the chances of "runaway" political decisions.

Seventh, it appears to be generally accepted by developing countries that land-based producers should have an opportunity for a hearing and that the international Authority should be empowered to deal with the problems of land-based producers. On the other hand, based on my conversations with many developing country representatives, I do not think that the developing countries object to placing the burden of proof on the land-based producers and to circumscribing the decision-making process in such a way that decisions of the international Authority which could involve adverse economic implications for investors or investing countries would be difficult to adopt.

Eighth, there is increasing awareness in the Group of 77 that, even if the Authority were empowered directly to exploit the Area through an organ known as the "Enterprise," the Enterprise would be subject to regulation by technical organs of the Authority and could not take action without the approval of the Council.

Ninth, there is widespread support for guaranteeing in the treaty the security of tenure of operators who are granted contractual rights by the Authority. Although I should hasten to add that the system of exploration and exploitation being proposed by the developing countries as reflected in Annex I to the single negotiating text could in practice be employed to nullify the guarantee.

While I have just summarized areas of potential compromise, I must candidly present to you a summary of areas where the most fundamental negotiating difficulties lie ahead of us. These areas of difficulty and my personal assessment of the underlying reasons for them are as follows:

1. Developing country spokesmen, when they speak on behalf of the group of 77 as a whole, express intransigent views on the question whether the international Authority should be empowered to exploit the whole of the "Area" to the exclusion, if the Authority so decides, of States and private companies. They say it must have this power; we say, "no."

2. They argue with <u>almost</u> equal vigor the view that ultimately the decisions, policies and actions of the

Authority must be subordinated to a one nation, one vote Assembly; we do not agree.

3. They insist that even if the Authority decides to exploit the Area in a contractual mode, it must be almost entirely free to dictate the terms and conditions of contracts -- particularly those relating to technology transfer and profits. To ensure a strong bargaining position in such contractual negotiations and for reasons related to the imposition of production controls, they insist that the Authority must have the right to keep the Area closed to exploitation until the Authority decides to open it; we insist that the Area be open to exploitation at all times.

Committee I is a manifestation of political and economic difficulties which are being faced by developed and developing countries in all areas of raw materials negotiation. The developing countries in many different forums are making a concerted thrust to acquire collective control over raw materials as a means to improve their economic well being and acquire increased political power. They appear to believe that they must be satisfied on the three points I have just made if they are to achieve this objective in the deep seabed.

They view their position on these matters as revolutionary, as can be seen from Mr. Engo's written statement introducing his single negotiating text. Industrialized countries, on the other hand, are acutely aware of their dependence on raw materials supply and cannot be expected to agree that -- in an area comprising two-thirds of the earth's surface which is now available for exploration and exploitation under existing international law -- they will surrender rights of access to the abundant raw materials of the seabed by agreeing to a system in which an international Authority could limit or exclude their access. For this reason, it is difficult to make predictions about the prospects for success in future negotiations - time will tell. On all areas where compromise was desired by developed and developing countries alike, compromise began to emerge. In respect of this intensely politico-economic issue -- whether the international Authority will have total control over access to the raw materials of the seabed and the amount of production which will come from the seabed -- there has been no willingness yet on the part of the developing countries to find a compromise. The banking system was in my view a serious and forthcoming effort to bridge this gap and find a final compromise. I hope it will ultimately be reconsidered at the Conference and

win support. I regret to report, Mr. Chairman, that in my opinion, the Group of 77 acting in concert did not attempt to find equally far-reaching compromise proposals.

Finally, I would like to emphasize that while it is now difficult to predict the course of future negotiating efforts in the Conference, even in Committee I where the political difficulties are the greatest, important, although still insufficient progress was made in Geneva, and further progress might be achieved next year. Such negotiations, however, can only lead to a successful convention if they occur in the context of developing country willingness to seek solutions which do not jeopardize the interests of the industrialized countries in securing access to, and long-term stable supplies of, minerals from the deep seabed and, on the part of industrialized countries, a willingness to probe for solutions to the problems which have troubled developing countries for a long time in respect of the development and use of raw materials.

June 6, 1975

Statement by
David H. Wallace
Associate Administrator for Marine Resources
National Oceanic and Atmospheric Administration
U. S. DEPARTMENT OF COMMERCE
before the
Committee on Commerce
UNITED STATES SENATE

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to testify this morning on S. 961. As other members of the Administration have stated in recent testimony, the executive branch is presently reviewing its policy following the Geneva session of the Law of the Sea Conference. The creation of a 200-mile area of extended fisheries jurisdiction over coastal species of fish, without fisheries management authority, will not give us the opportunity to establish sound management programs over these coastal resources to assure conservation of fish stocks and permit development of efficient methods of utilization to ensure that valuable protein is not wasted.

I would like to direct my comments this morning to the management of the coastal species within a 200-mile fishery zone in general. I will not therefore discuss the well-known U.S. position regarding anadromous fish, such as salmon, or highly migratory species, such as tuna, or other law of the sea questions such as optimum utilization and traditional fishing.

Some fish resources of the U.S. are in trouble. Reports from our scientists on the status of the stocks show serious overfishing on many of our most valuable species. For these the catch level peaked several years ago and has been declining steadily ever since. Some suggest that all the problems with U.S. fisheries are the result of excessive foreign fishing. This is not entirely correct. While

much of the overfishing has been caused by foreigners, there are instances where domestic overfishing has caused serious damage. To effectively manage and conserve fish resources, both foreign and domestic fishermen must come under a management regime. New mechanisms are required for conservation of fish resources. Therefore, creation of a 200-mile fisheries zone is not enough; it must be coupled with a domestic management regime which can effectively regulate the harvesting of fish whether done by foreign or domestic fishermen. Let me emphasize that our objectives are the same as yours. We want to protect the fish resources to ensure their survival at optimum levels which in turn will provide an opportunity for recreational and commercial fishermen to catch more fish on a continuing basis, and for consumers to buy more fish for the dinner table at a fair price.

We in NOAA have been studying the implications for effective management of fisheries in a 200-mile zone, the kind of legislative authority required, and the necessary management tools to adequately protect the living marine resources. A staff report titled "Fisheries Management Under Extended Jurisdiction, A Study of Principles and Policies" was recently prepared at my direction and distributed widely for comment. I would emphasize at this time that many of the points which follow have neither been finalized nor fully

discussed or coordinated within the executive branch. I would welcome the opportunity to keep this Committee continuously informed. Based on this report and the preliminary comments and discussions we have had with State and commercial and recreational fishing industry leaders, we have identified three major components of a management regime.

The regime first must have a system for data collection and analysis. The data must include accurate and timely information on catch. The catch data supplemented by resource surveys will be the basis for assessing the condition of the resources and the effects of fishing on the stocks. We must also have information on the economics of the harvesting and processing industries, and we must know about the employment in these segments in order to evaluate the impacts of any proposed regulations.

Second, the regime must have a mechanism for policy determinations and formulation of regulations. This component must consider individual, State, national, and international problems; it must be decisive and equitable in the decisions made in such areas because such decisions can affect people and how they make a living. The States should have a strong role in the development and implementation of management plans. Counting the commercial and recreational catch together, about 70 percent of today's domestic harvest is taken

within 3 miles of shore. States already have a capability for management which should be utilized insofar as is feasible and practical.

Third, the regime must have means to enforce the regulations and adjudicate violations as appropriate.

It is a basic principle in the management of any wild animal populations that the stock, or population, be managed as a unit throughout its range. The 70 percent of the domestic harvest within 3 miles of shore is mostly comprised of stocks that migrate across the boundary of the 3-mile territorial sea or the boundaries of adjacent States. There should be a single focus to manage each stock throughout its range. This focus could be vested in a regional mechanism with implementation by appropriate state and Federal authorities. For those fish stocks living farther out to sea, the Federal Government must have ultimate management responsibilities, but with substantial regional input.

Management of stocks which move along our coasts between States may require a system of strong regional fisheries organizations. This concept has been supported by almost all of those who have had the opportunity to comment on the Extended Jurisdiction Staff Report. The problems may be local, State, national, or international in scope, but their solutions may be best developed in the region by those most intimately concerned.

The three existing Marine Fisheries Commissions could serve in an advisory role, but it is our view and that of a number of those who reviewed the Report that the Commissions should not be the regional fisheries management mechanism. In addition, there must be some formal mechanism for obtaining advice from concerned groups, commercial and recreational fisheries, environmental groups, and the general public.

Ideally, the States involved should get together for joint management, but to date effective interstate action has been most difficult. Much of the difficulty lies with the lack of uniform legislation which would enable the States to function effectively in interstate or State-Federal management programs, such as we envision under a regional concept. This problem has been recognized and, under contract from the National Marine Fisheries Service, the Council of State Governments has been working on Model State Legislation to overcome this barrier. A review of the proposed model legislation will be held by the Council this month in Hyannis, Massachusetts. I cannot overemphasize the need for the States to adopt this model legislation if their existing legislation is not consistent with it.

In any event, we believe that an effective regime would provide authority to control the fishing activities of all fishermen, both foreign and domestic operating within the fisheries zone. This authority would include power to assess reasonable fees.

The whole question of enforcement and surveillance is a complex one particularly in determining how much is enough and what is the best combination of methods to use. We are currently working very closely with the Coast Guard and other Federal agencies on a thorough analysis of the entire problem.

The management of the United States coastal fisheries is complex. The fish stocks are many and varied. We must develop fisheries management plans, each tailored to specific needs of regional fisheries problems and prepared cooperatively with the States with advice and input from affected local interests. The Federal Government must hold a position of general leadership and authority for regulating the fisheries, but management must also be exercised in concert with the State Governments. This approach should lead to the development of rational, uniform management programs.

Mr. Chairman, I will be pleased to try to answer any questions the Committee may wish to ask. Thank you.

STATEMENT BY
THE HONORABLE JOHN R. STEVENSON
SPECIAL REPRESENTATIVE OF THE PRESIDENT AND
CHAIRMAN OF UNITED STATES DELEGATION
TO THE THIRD UNITED NATIONS LAW OF THE SEA CONFERENCE
BEFORE THE SENATE FOREIGN RELATIONS COMMITTEE,
SUBCOMMITTEE ON OCEANS AND INTERNATIONAL ENVIRONMENT
FRIDAY, MAY 23, 1975

Once again, it is an honor and pleasure to appear before the Senate Foreign Relations Committee to report on the progress in the Law of the Sea negotiations. The second substantive session of the Third United Nations Conference on the Law of the Sea was held in Geneva from March 17 to May 9, 1975. A third substantive session of eight weeks is planned for New York in 1976 commencing on March 29; the Conference also recommended that the United Nations General Assembly provide for an additional substantive session in the summer of 1976 if the third session of the Conference so decides and that the Conference be given priority by the General Assembly. Much to my regret our proposal that the Assembly expressly provide for completion of the treaty in 1976 was not approved.

I would summarize the results of the Geneva session as follows: The session concentrated on what is was supposed to -- the translation of the general outlines of agreement reached at the first session in Caracas into specific treaty articles and achieved a very considerable degree of progress; however, not as much progress as our

Delegation had hoped or as the pressures for prompt agreement on a new law of the sea demand.

The decision of the Caracas session not to prolong general debate was respected -- so much so that formal Plenary and Commission sessions were largely devoted to organizational and procedural matters. The substantive work of the session was carried on in informal Committee meetings (without records) and in working groups -- both official and unofficial -- with as many as fifteen different groups meeting in the course of a single day; and in private bilateral and multilateral consultations.

The official groups were handicapped by the insistence -- a reflection of the acute sensitivity of many countries with respect to the sovereign equality of all states -- that all such groups be open-ended. As a result they were completely ineffectual in dealing with controversial issues of general interests; such meetings were attended by a very large number of Delegations who, by and large, restated their national positions rather than negotiating widely acceptable treaty language. The official working groups were much more effective in dealing with a number of articles which were relatively non-controversial or of interest to only a limited number of countries -- such as the articles dealing with the baselines from which the territorial area is to be measured, innocent passage in the territorial sea, high seas law and,

in the pollution area, articles on monitoring environmental assessments and land-based sources of pollution.

The most effective negotiations and drafting of compromise treaty articles in major controversial areas took place in unofficial groups of limited but representative composition which were afforded interpretation and other logistical support by the Conference secretariat.

The Evensen group of some 30 to 40 participants, principally head of Delegation, was organized by Minister Evensen of Norway, initially on the basis of cooperation by a group of international lawyers acting in their personal capacity, but functioning at Geneva more as representatives of their respective countries. The Evensen group concentrated on the economic zone and vessel source pollution. The dispute settlement group which met under the co-chairmanship of Mr. Adede of Kenya and Ambassadors Galindo Pohl of El Salvador and Harry of Australia, with Professor Louis Sohn of Harvard serving as Rapporteur, was open to all conference participants and was attended at one time or another by representatives from more than 60 countries. A different sort of group was organized by representatives of the United Kingdom and Fiji to work out a set of articles on unimpeded transit through straits as a middle ground between the free transit articles supported by many maritime countries and the innocent passage concept supported by a number of straits states.

In brief, the principal substantive accomplishments of the session were the large number of relatively non-controversial treaty articles agreed to in the official working groups and the more controversial articles negotiated in the smaller unofficial groups which, while not as yet accepted by the Conference as a whole, do represent negotiated articles in large measure accommodating the main trends at the Conference.

The principal procedural achievement of the Geneva session was the preparation of informal single negotiating texts covering virtually all the issues before the Conference. These texts were prepared by the Chairmen of the three Main Committees on their responsibility pursuant to the consensus decision of the Plenary, on the proposal of the Conference President, that they should prepare negotiating (not negotiated) texts as a procedural device to provide a basis for negotiations. Copies of the texts have been given to the Committee for your study, and possible inclusion in the record. The single Committee texts do provide a means for focussing the Conference work in a way that should facilitate future negotiations with revisions and amendments reflecting the agreements and accommodations I hope will be reached at the next session.

There was clear evidence at the Geneva session of a widespread desire to conclude a comprehensive treaty on the Law of the Sea. Unfortunately, the nature of the negotiations

was not geared to immediately visible results and the public impressions may have been that little progress was made. In fact, there were substantial achievements in some areas, although overall I was disappointed that the work schedule outlined by the General Assembly for conclusion of the treaty in 1975 will not be met. The informal single texts and the provision for a second meeting in 1976 if the Conference so decides, provide a procedural basis for concluding a treaty next year. It remains to be seen whether or not the will exists to reach pragmatic solutions where wide differences of view sitll exist. In this connection, I should also point out that a number of countries, particularly those with little to gain and in some cases much to lose from the establishment of a 200-mile economic zone do not share our perception of the urgency of completing the treaty promptly. With the general expectation from the outset that at least one more full negotiating session would be scheduled in 1976, the United States was vitrually isolated in urging major political compromise at the Geneva session on the very difficult Committee I deep seabed issues.

I bleieve that much common ground was found on navigation, fisheries, continental shelf resources and marine pollution issues. Significant differences remain with respect to the deep seabed regime and authority and, to a lesser degree, on

scientific research and on the desires of landlocked and geographically disadvantaged States to participate in resources exploitation in the economic zone.

The juridical content of the 200-mile economic zone is probably the issue of the most interest to most countries.

The Evensen group made a considerable contribution to the Committee II single text by producing a negotiated chapter on the economic zone, including fisheries and the continental shelf. These articles provide for comprehensive coastal state management jurisdiction over coastal fisheries stocks out to 200 miles. There is also a coastal state duty to conserve stocks and to fully utilize them by allowing access by foreign states to the catch in excess of the coastal states' harvesting capacity. The Articles on anadromous species (e.g. salmon) were largely acceptable to the States most affected. These articles contain new, strong protections for the State in whose fresh waters anadromous fish originate. Attempts to negotiate acceptable articles on highly migratory species such as tuna were not successful. I am hopeful, however, that efforts to reach a negotiated solution in this area will continue.

There was little opposition to a 12-mile territorial sea (Ecuador's proposal for a 200-mile territorial sea was supported only by a handful of countries and even some of the supporting statements were ambiguous). There was a strong trend in favor of a regime of unimpeded transit passage in

straits used for international navigation. There was very widespread acceptance of freedom of navigation and overflight and other uses related to navigation and communication as well as freedom to lay submarine cables and pipelines in the 200-mile economic zone.

Coastal state exclusive rights to the non-living resources (principally petroleum and natural gas) in the economic zone were broadly supported. There was more controversy with respect to coastal State rights to mineral resources of the continental margin where it extends beyond 200 miles. As a possible compromise between opposing views, the United States suggested the establishment of a precise and reasonable outer limit for the margin coupled with an obligation to share a modest percentage of the well-head value of petroleum and natural gas production with the international community. I anticipate that there will be further negotiations in the Evensen group to determine a precise method for defining the outer limit of the continental margin beyond 200 miles and on a precise formula on revenue sharing.

Regarding protection of the marine environment, texts were completed in the official working groups on monitoring, environmental assessment and land-based pollution. Texts were almost completed on ocean dumping and continental shelf pollution. Negotiations were conducted in the Evensen group on vessel source pollution without reaching agreement; however,

a trend did emerge in favor of international standard setting in the economic zone.

The Group of 77, particularly those who did not participate in the Evensen group urged further strengthening of coastal state rights in the economic zone. The landlocked and geographically disadvantaged states were dissatisfied with the failure of the Evensen articles to afford them to legal right to participate in exploiting the natural resources of the economic zone on a basis of equality with coastal states.

There was a continuation of the debate between those states that demand consent for all scientific research conducted in the economic zone and those such as the United States that support the right to conduct such research subject to the fulfillment of internationally agreed obligations. A new approch sponsored by the Soviet Union attracted considerable support. It requires consent for resource-related research and compliance with internationally agreed obligations for non-resource related research.

In the dispute settlement working group most states support binding dispute settlement procedures in areas of national jurisdiction although a minority opposed or wish to limit drastically their applicability (e.g. to navigation and pollution issues). Questions remain with respect to the relationship to coastal state resource jurisdiction and the scope and type of

the dispute settlement mechanism. A compromise proposal permitting States to elect between three dispute settlement mechanisms -- i.e. the International Court of Justice; arbitration or a special Law of the Tribunal -- was acceptable to the vast majority of participatns. However, some Delegations considered that their preferred mechanism should be compulsory in all cases, while others favor a functional approach -- different machinery for different types of disputes. General support exists for special dispute machinery for the deep seabed.

It is now clear that the negotiation on the nature of the deep seabed regime and authority is the principal stumbling block to a comprehensive Law of the Sea Treaty.

The basic problem is an ideological gap between those possessing the technological ability to develop deep seabed minerals and those developing countries which insist that the international authority directly and effectively control all deep seabed mining and associated activities, and ultimately become the exclusive operator on the deep seabed. The developing countries' position in this area is reflective of their general concern expressed in other international forums for reordering the economic order with respect to access to and control over natural resources, particularly with respect to their price and rate of development.

The United States explored a number of approaches in an effort to be forthcoming with respect to developing country

demands for participating in the exploitation system. We indicated our willingness to abandon the inclusion of detailed regulatory provision in the treaty and to concentrate on basic conditions of exploitation. We agreed to consider a system of joint ventures and profit sharing with the Authority. In addition, we proposed for consideration the reservation of areas (equal in extent and potential to those in which financial conditions were subject to the Basic Conditions) in which the Authority could negotiate for the most favorable financial terms it could obtain. The Soviet Union proposed a parallel system through the reservation of areas in which the Authority could exploit directly, while in other areas states could exploit under a separate system of regulation by the Authority. Both approaches were rejected by the Group of 77 on the ground of their ideological difficulty in dividing the Common Heritage into two separate regions subject to different systems of exploitation. Some developing country flexibility in the deep seabeds was demonstrated by their willingness to submit the entire exploration system to the control of the Seabed Authority Council and to include representatives of designated developed and developing country interest groups on that body in addition to those selected on the basis of equitable geographic representation.

Mr. Chairman, with over 140 states participating in a Conference affecting vital and complex economic, military, political, environmental and scientific interests, we could

easily characterize the results of the Geneva session as a considerable success. However, it is no longer sufficient to make progress, even substantial progress, if the goal to the adoption of a widely acceptable comprehensive treaty continues to elude us beyond the point at which many States will feel compelled to take matters into their own hands in protecting interests with which the existing law of the sea does not deal adequately or equitably.

Mr. Chairman, I have spent a considerable amount of time over the last six years working with those both within and outside our government who appreciate the imperative need of building a better legal order for the oceans. Throughout this period, the members of the Senate Foreign Relations Committee, and you in particular, have provided sound advice and unfailing support in this effort to resolve what appeared at first to be insolvable problems. Some still believe that failure is inevitable. I do not and cannot accept that view. Moreover, I do beleive most strongly that we would be terribly remiss as a nation if we did not make every exertion necessary to achieve an acceptable treaty on what appears to be the final stretch of this long road we have travelled. I sincerely hope that this Committee and the Congress in general will give its support to my successor as it has to me in our common endeavor to establish order in the oceans.